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The American
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AUTOCRACY VERSUS DEMOCRACY IN CONTEMPORARY EUROPE, I*

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Yale University

I

Looking over the political scene of contemporary Europe, we observe that the European states are aligned in two fundamentally antagonistic camps of political institutions and ideals. Democracy and liberal institutions are still in force in Great Britain, the Irish Free State, France, Belgium, the Netherlands, the Scandinavian countries of Sweden, Norway, Denmark, and Finland, in Switzerland, and in Czechoslovakia; while autocracies at present embrace Russia, Turkey, Germany, Italy, Portugal, Austria, Poland, Yugoslavia, Bulgaria, Rumania, and Hungary; also among the Baltic states, at least Latvia and Estonia may be so classified. As for Spain and Greece, notwithstanding that democratic constitutions are nominally still in existence, it is at least open to doubt whether or not they at the present moment should be classified as democracies. By far the greater part of European territory and of European population is under dictatorial rule of one type or another. It might seem, therefore, appropriate to weigh the possibilities of a further expansion of the systems of government which, loosely but rather adequately, are termed dictatorships or autocracies.

By these terms we understand any governmental structure in which the principle of the separation and mutual control of the different agencies of government is replaced by a concentration of supreme power in the hands of one man or a group of men who are uncontrolled by a free and unrestricted public opinion, and who wield an absolute power over the executive, legislative, and usually

* This article covers developments to April 1, 1935.

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also the judicial branches of government. Therefore the term autocracy or dictatorship employed here embraces not only the fascist variety as presented by Italy and Germany, but also the communistic form of dictatorship in Russia; although both forms of government are based on the contention that they represent the overwhelming majority of the nation. Terminologically, we will not apply to these autocratic forms of government the Aristotelian conception of tyranny or despotism which usually not only stands for arbitrariness of government, but implies also the exploitation by the rulers of unlimited powers for their own benefit or the benefit of their groups or classes. In that respect, the modern type of autocracy diverges markedly from the older traditional form of genuine despotism. The dictators of today are undoubtedly possessed by the lust of power and by the allurement of personal glorification—passions which are frequently dynamic in themselves, and which function as irrational and emotional incentives. The real force driving dictators of today, however, is not the desire for personal gain in the debased sense of economic or monetary interest. On the contrary, the modern dictator acts as one *a deo excitatus* under the metaphysical impulse of a vocation which is a strange mixture of personal ambition and super-personal patriotism, and in which the individual passion for power may be an underlying, but by no means the decisive, motive.

A survey of history illuminates the fact—very often overlooked—that the rationalization of government by the devices of free self-expression called democracy is a comparatively new phenomenon, and that mankind has lived far longer under an absolutist régime than under a political system in which government is dependent on and controlled by organized public opinion. It appears that autocracy for the longest period has been the predominant form of government in Europe, whereas the rapid spread of democracy since the second half of the nineteenth century—and especially as a consequence of the Great War—is a comparatively recent, and even surprising, phenomenon.

Dictatorial rule in France ended only in 1815, after the tentative and delusive episode of democracy during the first years of the French Revolution, and this type of régime had a significant recurrence one generation later under Napoleon the Third's new Caesarism; while Russia has been a despotically ruled nation without interruption since she entered the European scene. Italy,

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Germany, and the nations under the sceptre of the Hapsburg monarchy lived until past the middle of the nineteenth century under a form of government which, despite its benevolent paternalism, was nothing less than a dynastic absolutism so deeply rooted in the minds of the subjects that not even the general liberalizing tendency of the second half of the century could bring about a genuine free government. We shall not speak of the Balkans, of Turkey, or of Spain, where even liberalization was withheld until the beginning of this century. Thus, the countries which, since time immemorial, have been the center of civilization are identical with those where the inheritance of centralized Roman absolutism has shaped traditionally the form and essence of government. It is not much more than four centuries since Bodin and Machiavelli laid down the rules for what has been regarded as the eternal wisdom of autocracy.

The only countries where democracy and liberalism could implant themselves into the mind and marrow of the people were the Anglo-Saxon and some of the smaller Protestant states of Europe, such as the Netherlands, Belgium, and the Scandinavian monarchies. England had never been under the influence of the Roman legal conception of the centralized state, and she was able to break the Stuart despotism under the impulse of religious freedom, while the spirit of political and religious independence was carried to her colonies beyond the sea. England and the English-speaking North American states passed the threshold of self-government at about the same time. The simultaneity of the downfall of the Fox-North coalition in 1784 and the foundation of constitutional democracy in America are not merely accidental. Since then, the Anglo-Saxon states have, without a recrudescence of autocracy, grown into full-fledged and traditionally accepted democracies.

Although to the observer of history the recurrence of dictatorial rule of the modern type of pseudo-plebiscitary Caesarism is by no means astounding, the extension and the apparent irresistibility of the new dictatorial wave are of deep concern to everybody who values democracy as a higher step of mankind toward progress and civilization. Not that the mere fact of autocracy is menacing; it is rather the vehement and general return to autocracy which inspires the gravest apprehension for the subsistence of free institutions in those countries which so far have been successful in preserving the form and substance of democracy. The reaction against

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post-war democracy was violent and almost universal. To recall the chronological progress of dictatorship since the War: Russia in 1918, Hungary in 1919, Turkey after 1920, Italy after 1922, Portugal in 1925, Poland after 1926, Yugoslavia in 1929, Germany in 1933, Austria, Estonia, and Bulgaria in 1934, adopted a form of dictatorial government which, despite some ideological and circumstantial differences, shows a striking similarity in governmental technique.

Scarcely two decades ago, discussion ran high over the value of monarchy; parliamentary democracy appeared as the inescapable solution. At present, democracy is everywhere on the defensive, and the victory of autocracy seems hardly less inevitable than formerly the universal acceptance of democracy. Fear persists today more than ever that the contagious spread of dictatorships cannot be checked. Is there an immunity against the virus of dictatorship, or must it be taken for granted that in the course of the next few years more, or even all, of the European democracies still enjoying the rule of law will succumb to the fascist onslaught? The force of Signor Mussolini's famous warning that fascism is no article for export has been effaced by subsequent events, and by the originator of fascism himself, whose political pressure forced on Austria a fascist system of totalitarian dictatorship. German National Socialism goes so far as to proclaim openly the paramount validity of the authoritarian doctrine and expects world-wide acceptance of its creed.

On the other hand, the Bolshevik belief in a communistic world-revolution has apparently receded into the background, but probably only for reasons of tactical expediency and political realism, which distinguishes this specimen of autocracy from the other dictatorial systems. The moving force behind the Russian imperialism of tomorrow is the hypothesis of the universal validity of communism after the fascist régimes have passed the stage of capitalistic dictatorship. Stalinism considers fascism only as a preliminary of world-revolution. We are therefore on safe ground in assuming that modern dictatorships of fascist or communist tinge are not only articles for home consumption but religions which, like all great spiritual movements of history, aspire to transform the whole world gradually into one realm of autocratic rule; while the supersession of democracy by autocracy will be but a means of the transformation of the spiritual, political, and economic system of the globe.

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To explain this phenomenon of proselytic aspirations, we may draw again on history for illustration. All great revolutionary movements, whether religious, spiritual, or political, have displayed an inherent missionary zeal. The most striking example is afforded by the French Revolution, which rapidly outgrew the national conditions of its origin and developed a millenial activism of international momentum. The Jacobin doctrine of 1794 reveals a singular likeness to present-day fascism. Its reactions on the individual were totalitarian in every sense of the word, and its apostles believed strongly in the world-wide mission of the "liberation" of the still "enslaved" nations. In the international field, the doctrine of the all-encompassing power of Jacobin revolutionary thought assumes, in the progress of the revolution, the conception of the right of intervention. Convention and Directory did not hesitate to motivate the territorial expansion of the French republic by the missionary obligation imposed on France to liberate the "subjected" nations. Napoleon's daemonic ambition gave this missionary impulse another direction. Fascinated by the allurement of irresponsible sovereignty, he became, in the guise of the new legitimacy, the powerful exponent of revolutionary expansion, and his dreams of a Pan-European emperordom under the hegemony of France were nothing else than the realization of the revolutionary proselytism of the French Revolution.

Likewise, the revolutionary impetus of the missionary spirit is one of the strongest elements of fascism and is easily explainable psychologically. The individual's obsession by belief in the absolute and indisputable value of his own devotion to a new basic principle of life drives him to disseminate his ideology among the nations which, in his conviction, are still laboring under the defects of a political and ethical system that he was fortunate enough to shake off. The intrinsic value of his own ideals must be tested and confirmed by the acceptance of the same doctrines among other nations. The fascists despise the League of Nations as an instrument of degenerate democratic internationalism, but they believe strongly in the necessity, and therefore in the possibility, of an international brotherhood of fascist nations which will, in their turn, accomplish the task of world-pacification that the league of democracies has failed to achieve.

In Germany, this quasi-religious missionarism is enhanced by the feeling that the Treaty of Versailles deprived her of the national

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birth-right. The conception of a National-Socialist order of the state coincides with the latent or patent irredenta-ideology in all territories having a German-speaking population, such as the Saar, Danzig, Memel, Austria, Czechoslovakia, and even parts of Switzerland and Belgium, where the race affinity of the Flemish population is favorable for the amalgamation of fascist and nationalist ambitions. If the Alsatians and the South Tyrolese remain so far outside of the scope of the National-Socialist propaganda and influence, it is only for reasons of political opportunism, and the Third Reich may anticipate an ultimate claim to embrace all the scattered segments of German nationhood in one homogeneous national unit.

Italian fascism no longer has to satisfy unfulfilled territorial aspirations, but despite the fact that official fascism is alien to proselytism, the seed of fascism as the corollary of a new economic order is spreading over all Europe. Only recently, Signor Mussolini frankly confessed his conviction that the corporative form of political life must be, and will be, the universal form of government in the future. In the course of the nineteenth century, the doctrine of economic *laissez-faire* was the ramrod against the political forms of absolute monarchy and, consequently, liberalism became a powerful ally of political democracy; likewise today, the idea of the corporative order of the state is considered as the pioneer for the transformation of the liberal and democratic institutions into the new forms of autocratic government. Thus, fascist ideology, in countries where the incentive of the unfulfilled national aspirations is non-existent or inefficacious, is usually couched in economic terms of the corporative reconstruction of national life. In all countries suffering from the depression, the Italian corporative order is proclaimed as a tangible remedy for the visible deficiencies of economic restoration under a democratic system of government. The missionary ardor of fascism uses an institutional scheme in place of a spiritual ideal for the conquest of the democratic world. Again it is the inherent millennial element that drives the apostles of the new creed. In the fascist repertory, corporativism has become in the economic field the equivalent of the leadership principle, and it has assumed the quality of an emotional ideology barring any dispassionate and critical consideration of the merits of a system which, in the country of its origin, so far has shown very problematical results. The missionaries of fascism accept the corporative order as

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the solution of the world's economic difficulties with the same fervor that the French Revolution accepted the convictions of democracy and popular sovereignty as the infallible remedy for the political defects of the absolutist régime.

II

In estimating the possibilities of a further expansion of fascism, we have to distinguish between the general tendencies in favor of the replacement of democratic by autocratic rule and the specific conditions arising from the economic and political situation of a given country. We shall first discuss the general motivations.

One of the most tempting motivations for the ascendancy of the fascist system lies in the connection between economic change and the necessity for change in the form of government. The argument runs as follows: No country, regardless of its political structure, has been able to remain outside of the economic world-depression. World-depression is a result of the war and the peace treaties, as well as of the technological developments of the post-war period. While the political units have unfolded the flag of economic nationalism, it is useless to expect the restoration of the economic equilibrium by the natural operation of the principles of offer and demand, of production, distribution, and consumption of labor and goods between the nationalistic states. National economic autarchy has become the catchword of the day. Governmental interference, therefore, is everywhere considered as indispensable, even if the regulating influence of the government assumes merely the form of a New Deal or an economic planning which offers no more than the psychological prospects of a restoration of confidence. From this angle, the differences between the ideology of the New Deal and of the corporative order of Italian brand are secondary. Any kind of government activity exercised over a large territory requires a centralized machinery unfettered by the influences of private interests, and perhaps even freed from private initiative. Economic self-government is overridden by state regulation and regimentation. The necessity and the advantage of a centralized authority seem to be obvious.

From this consideration, so far purely economic and technical, the next step leads logically to the political implication of centralized planning authority, namely, the concentration of political power in the hands of a government strong enough to cope with the

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obstacles during the transitional period. A powerful authority intended for economic purposes is inconsistent with the existence of democratic control of the government, because democracy is nothing less than a compromise between the many conflicting interests of public opinion rationalized in the forms of parliamentary give and take between political parties. The customary institutional setting of the political society must therefore be adapted to the necessities of the new conception of the economics from above, and must undergo the changes which the inevitableness of the economic situation involves. The replacement of party government by a technical and non-political bureaucracy under the political leadership of those responsible for the economic reconstruction is a logical consequence.

It is manifest that the old forces of society embodied in political parties, expecially in the Labor parties, will not surrender voluntarily. As public discussion is deemed to be detrimental to the concentration of powers demanded by the economic necessities, the suppression of parliamentary and democratic discussion must be the first step toward the establishment of the new order. As a gradual evolution cannot be expected, the hindrances in the existing political organization must be overcome by revolutionary force. Bureaucracy in itself is no force; it must therefore rally a military force, and where the existing army is not at hand or politically unreliable, government resorts to the extra-constitutional forces available among the fascist movements. Under the pressure of the crisis, no time is left to wait for the other possibility, namely, that the voluntary coöperation of the parties might enable the government to build up a centralized bureaucracy from below. Dictation from above becomes necessary, even where the spirit of the nation abhors compulsory methods of suppression of free institutions. Experience shows that economic interests benefiting from the existing economic order will organize public opinion for the defense of their ancient rights and privileges. Extermination of political parties and of free expression of political public opinion is, therefore, an inevitable condition for the effective operation of economic planning, which is greatly facilitated by the elimination of political resistance from public opinion organized in political parties. This, then, is one of the fundamental dangers for the further existence of democracy so long as the crisis does not miraculously disappear. Only if the ground is cleared from the snares of political irrational-

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ism is rational planning possible and the way open for recovery. It is true that in so far as dictatorship came first and paved the way for economic planning, the process from democracy to fascism went historically in the other direction. The prolongation, however, of the crisis necessitates the reversal of the process, and induces even democratic countries to turn to dictatorial devices in order to save the community from economic ruin.

Another danger threatening democracy emanates from the facilities afforded by the fascist technique. In discouraged and silent apathy, the victim sees the menacing danger and is unable to resist or to make a counter-attack. Introducing fascist methods into a state has become a science, and is a typical procedure applicable to almost any state under the rule of democracy. It appears in the form of a rationalized and pre-calculated routine progressing, step by step, on the basis of experience and precedent. Democracy, faithful to its avowed principles, tendered to a ruthless enemy the most effective weapons for its own destruction. Fascism and National Socialism have always proudly put forward the contention that they came into power, not by revolution, but by utilization of the working machinery of democratic constitutions. Signor Mussolini was regularly appointed prime minister of a minority cabinet by the king, according to the Carlo-Albertian *Statuto*, and by an ingeniously constructed electoral law he was in a position to capture public opinion for the new symbols by constitutional means, while Herr Hitler, in accordance with the Weimar constitution of 1919, was nominated *Reichskanzler* by the Reich's president, and has been confirmed in power by the election of March 5, 1933. Both the *Duce* and *Führer* boast that they gained power by the normal operation of democratic public opinion as expressed in parliamentary elections. Yet lawyers who investigate this claim impartially may considerably differ in opinion. The semi-military forces of Black-shirts marching on Rome on October 27, 1922, were in fact a revolutionary pressure not provided for in the articles of the constitution. Still more questionable from the legal point of view is the transition from the cabinet of von Schleicher to the Hitler government on and after January 30, 1933. In this respect, a few remarks must suffice. The preliminaries for the election, by which the legitimate opposition, the parties of the left, and the Catholic centre were heavily handicapped, the skillful stage-management of the election itself on the background of the Reichstag

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fire, the anti-constitutional exclusion of the newly elected Communist and of many Socialist members from the Reichstag, empowered the government to pass the famous "enabling law" of March 24, 1933.

The psychological implications which induce modern dictators to disguise legalistically the old-fashioned forms of the open *coup d'état* cannot be discussed here. Whereas the actual access to power may vary from time to time and from country to country, the methods by which the way to power is sought are, under the existing system of democracy, strikingly identical. The rise of the semi-military and revolutionary movements of the Black-shirts and the Brown-shirts was made possible by the protection of, and under the cover of, the liberal and democratic institutions of Italy and Germany. Democratic magnanimity was suicidal for both. Democracy sharpened the dagger by which it was stabbed in the back. The National Socialist party was admittedly antiparliamentarian. Hatred of the Western parliamentary system was the most attractive plank of its political platform, as racism was the sociological incentive for the masses. Nevertheless, by the generous and lenient Weimar republic, Hitlerism was allowed to use democracy for the avowed and explicit purpose of destroying democracy. The anti-parliamentarian cohorts entered the legislative bodies with the unreserved intention to wreck the parliamentary machinery. The courts misunderstood the true meaning of democratic privileges and sustained the "constitutional" rights of the movement. By this attitude, they frustrated the belated and half-hearted measures of weak and dogmatically entangled governments. The democratic constitution became the main obstacle against its maintenance and the best tool for its destruction. The National Socialist chieftain was the undisputed master of the symbols of the state long before he became the constitutional leader. It is true that the shrewd exploitation of the military prepossessions of the German people enabled the National Socialists to build up their impressive private army, but the same is true in Italy, where the military forces of the Black-shirts met, at the beginning, with the hostility of a nation by no means addicted to the magnetism of military display. The existence of a resolute competition to the legal authority of the state was in itself sufficient to shake the foundations of the state. Democracy was doomed to failure from the beginning because it was pacifist instead of militant.

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The antecedents in Russia, Italy, Germany, Austria, cannot but lead the fascist activists to the conviction that a recipe which has been so irresistibly triumphant in such great and well-organized countries will, under given conditions, be not less successful and irresistible in other countries. We thus witness the application of the sanctioned methods of undermining the authority of the existing government until the time for the *coup d'état* is ripe. The first step toward this end is the founding of an organization covering the whole territory with a network of affiliated branches under the strictly centralized control of a general headquarters directing the forces according to a strategical plan. Small fires of political unrest are kindled until the attention of the whole community is aroused and the necessary propaganda can be launched. By a vilifying campaign, the existing "system" of government is utterly discredited. A political, social, and economic program of astounding contradictions is proclaimed, and wild promises of every kind are lavishly given to everybody. The germ of discontent is disseminated by unscrupulous spellbinders and a permanent state of disorder and disturbance created in the country. Mass meetings and public demonstrations help to ferment the agitation. A wave of libellous law-suits pervades the country, by which even the most honest of opponents is disparaged under the maxim *semper aliquid haeret*. The most obvious truth is distorted by over-simplification of the most obvious facts. Demagogic slogans calculated for the lowest intellectual level of the masses are propagated until the country is one seething mass of conflicting desires, and even the peaceful-minded citizen arrives at a stage where he begins to become restless. The whole pandemonium is accompanied by the drowning step of the marching legionnaires. The display of the military insignia such as uniforms and banners, the wearing of badges and the bearing of arms, and, most of all, the comradeship of the mystical union in the new spirit, do not fail to impress the simple-minded, and the symbolism of the new order penetrates into the deepest layers of society. The whole nation is divided into two camps of belligerent parties ready and prepared for rebellion and civil war. This is the moment for which the strong man has waited. He who commands the power of organization has plowed the soil so deeply that shortly he rises as the savior of the commonwealth who in triumph snatches the reins of the state from the trembling hands of democracy. The events in Austria culminating

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in the assassination of Engelbert Dolfuss exemplify the application of the fascist technique.

From which classes of people does fascism at the beginning draw its recruits? The farmers rank foremost among the parts of the population which are most readily accessible to the fascist technique. They are habitually dissatisfied, and in fact suffer most cruelly from the depression of world prices. Second come the middle classes, deprived of their savings by the prolonged deflation; and thirdly, the vast army of the unemployed and the youth of all classes, despairing of the future in the over-crowded countries, and most willing to lend a hand to a new start in which they can dislocate their elders from property and power. In the background are always concealed some wealthy reactionaries who provide financial support in the expectation that after the advent of the fascist to power, the capital and interest of their investments will be reimbursed to them. In fact, the capitalistic wire-pullers behind the stage are one of the most striking similarities in the initial period of fascism, and there is a good deal of truth in the familiar, though too simple, argument that fascism is nothing else than a method for the maintenance of the existing capitalistic order.

Of course there must be a "leader" who is the visible expression of the new order and who embodies the ideology of the fascist creed. All that is needed is a personality appealing to the masses, convincing them and convinced himself of his exceptional abilities and his patriotic vocation. As the "leadership-principle" works automatically by its inherent spell, without regard to the special aptitudes of the man himself, it becomes a sort of abstract force dissociated from its personal embodiment, and the ascendancy of the leader is easily established. He rises from the dark, and the magic charm of the authoritarian idea works for him. The example of the successful leaders in the fascist countries has given birth in almost every nation to one or more "leaders" emerging from the depths of the people and each following his calling as the man of destiny and the saviour of his people from the decadence and humiliation of a system in which hitherto a careful selection by the parliamentary or electoral or civil service career has been the necessary condition for public leadership. Not the least attractive element of fascism, as we have seen, consists in the "democratic" possibilities of the power relationship. The irrational element in the rationalized technique of fascism consists in the fact that the opportunity for

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glory and distinction may appear for anybody unknown today who is able and bold enough to seize his opportunity for tomorrow. Paradoxically, a study of fascist movements in the still democratic countries reveals the astounding fact that the person of the "leader," or in some cases of the rival "leaders," is less important than the leadership-principle itself; if only the mechanism of the fascist movement can be set in motion, the particular persons who operate it are rather irrelevant, and the same spell works whether an unworthy or an important personality is officially proclaimed as the incarnation of the fascist idea. There is no lack of ambitious men willing and prepared to rise, by this irrational process, to glory and power, who in the normal functioning of the slow and tedious process of political selection never had the slightest chance to become head of a state. It is not accidental that among the many "leaders" struggling for supreme power in most of the countries not yet won over by fascism, none, with the possible exception of Sir Oswald Mosley in England, is a conspicuous personality or a man of more than average ability.

Having described the ways and manners of fascism in undermining the existing democratic state, we will now observe how the final blow is struck. It depends on the temperament of the leader and the specific conditions of the political situation whether the final access to power is sought by the tactics of shock or attrition. The ultimate break-down of the regular authority is inevitable if only the fascist technique is applied with consistency and skill. Modern technique has rationalized the most irrational feature of government-dynamics, the *coup d'état*. The abortive attempt of the National Socialists in Austria in the summer of 1934 is most instructive in this respect. It failed only by the accident of amateurish execution and bad stage-management. After the way to power has been forced, the further events follow a well-proved pattern. The army and the civil service offer no serious resistance, not so much because they are "politically neutral," as because they have among them so many sympathizers with the new order that the dislocated regular government can no longer rely on them.

The majority of the population, at the beginning of a new fascist order, is undecided and unorganized. It is checked by the armed forces of the revolutionary government and impressed by the possession of power, not to mention the terrorizing influence of the first "purging" measures against the opposition. If the new govern-

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ment gets hold of the press and of the radio, the persistent hammering in of the new doctrines will, in an amazingly short time, result in the suppression of organized opposition, and the rest of the bourgeois classes will be swayed by the splendor of the mass-movements which the new masters command. The mere fact that a man hitherto unknown has gained power is, for the common man, a sign from heaven. In this transitional period, the most important and most decisive fact is that the fascist revolution has been successful in so many other countries and that everywhere the initial hostility to the new régime has been futile. Slight deviations from this pattern of conquest may occur according to circumstances and national conditions, but thus far experience demonstrates that the fascist technique is irresistible, and that the inevitable must be borne. The disintegration of the existing order by the propaganda and the millenial hope which has been evoked by the apostles of the new order render resistance impossible, unless effective defense measures have been taken in time.

III

After this rather perfunctory sketch of the progress of fascist technique and of fascist propaganda in its typical development, we turn to the question: Is the expectation of the fascist missionaries justified, that all government in the near future will assume a fascist uniformity? Are the marching battalions of the many-colored shirts an invincible army which will make the world safe for autocracy? In answering these questions, we must consider first the general aspect of the battle now waging between democracy and autocracy, and then the specific conditions in each European country.

Fascism, in its genesis, is a mixture of national disillusionment, political dissatisfaction, and economic crisis. The economic depression as a particular incentive for a change in the structure of governments is in fact universal. If the crisis passes, or even if it abates considerably, economic pacification will obviate the desirability of a change in the direction of fascist economics. Although a slight silver lining on the horizon may be visible in some countries, it does not seem very likely that the economic impulses for a fascist turnover will disappear in the years to come. The other conditions for a fascist new deal—national disillusionment and general dissatisfaction with the existing democratic order—vary in potency in different countries. Of the nations which thus far have turned to

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fascist rule, all, with the exception of Italy and Portugal, are countries defeated in the World War or are in the category of new states created by the peace. Fascism was considered to be the only possible way for a national reorganization after the defeat. Italy, although one of the victorious nations, felt deprived of the fruits of the victory she believed herself entitled to. Fascism began, significantly enough, in d'Annunzio's "conquest" of Fiume. In Spain, Primo de Rivera's abortive dictatorship had no international implications and originated solely from internal troubles. In Turkey, Russia, Germany, Austria, and Hungary, however, the restoration of the national integrity was from the beginning most conducive to fascism.

The same is true for some of the newly created states of the post-war period. When King Alexander introduced the dictatorial régime in Yugoslavia in 1929, he was under the impression that only the extermination of the parliamentary system could prevent the disruption of the new state by the rival forces of the Serbs and Croats, and the establishment of a dictatorial order served the purposes of the national integration. This may be said also for Poland, where Marshal Pilsudski could deal with the dangers arising from the unsettled state of a newly created community and from the disunity of the parliamentary parties only by a forceful concentration of power in the hands of an autocracy backed by the army. Bulgaria, which entered the fascist camp in May, 1934, was also one of the defeated nations, and she could not remain outside the uninterrupted chain of dictatorships extending from the North Sea to Asia Minor. The general instability in the Danube area and the danger of a communist upheaval forced the small country into the ranks of dictatorships for the sake of national self-preservation.

The same arguments for a fascist change were valid for those of the Baltic states which, in 1934, renounced democracy and parliamentary government, namely, Latvia and Estonia. They were wedged by their geographical situation between the great dictatorship-states of Russia, Poland, and Germany, and their national existence is not settled enough to be guaranteed against dangers arising from the vicissitudes of problematic democratic organization. In all states which have been created as a result of the World War, national self-preservation may have warranted the adoption

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of a strong and stable government free from the dangers of party strife and devoted to the national reconstruction.

In most of the other countries still adhering to democracy and parliamentary self-government, these considerations for the necessary maintenance of national integrity against overwhelming odds are conspicuous by their absence. Great Britain, the Irish Free State, France, Spain, Belgium, Holland, the Scandinavian countries, Switzerland, have no territorial complaints and no national grievances tempting them to abandon democracy; their international status will gain nothing by departing from democratic rule. Of Czechoslovakia, which is also a newly created state with an unsettled international outlook, we shall speak later. In none of the countries mentioned do considerations of international policy necessitate the change from democratic to autocratic government. If the fascist tide swallows one of them, it will be motivated alone by the alleged superiority of the fascist over parliamentary government or by ideological considerations implicit in a desire for political "rebirth."

Scientific observers of the fascist expansion have tried to find a common explanation for the spread of dictatorial rule in Europe. The Spanish author Cambo, for instance, who in 1930 wrote one of the very few non-sensational studies on dictatorships, has discovered what he thinks a fact that among all nations which have become fascist the educational standards of the population are decidedly lower than in other countries. In fact, illiteracy in Italy, Spain, Yugoslavia, Poland, Bulgaria, and Turkey is considerable, and there may be some truth in the argument that a country is more apt to succumb to dictatorship if the means of political enlightenment of the masses are limited. Inasmuch as Germany and Austria, however, have joined the ranks of the autocratic countries, the weakness of the argument is manifest. In no other countries in the world are the cultural qualities of the average citizen greater, and if any reproach can be made to the inhabitants of Germany and Austria, it is that they have devoted themselves too much to political instruction and not too little. Illiteracy is negligible in Germany and Austria.

Another observation which has been put forward as a general explanation of the vulnerability of a nation to fascism is more convincing. In none of the countries now under a dictatorship has the tradition of self-government and of free institutions been suffi-

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ciently strong and lasting to avert the recurrence of autocratic rule which, for an immemorial period, has been the customary form of national government. It is true that in Germany, Austria-Hungary, and Italy, for at least two generations after the middle of the nineteenth century, there have existed constitutions which, if not equalling the Western and Northern democracies in spirit, were by no means autocratic in the sense of modern fascism. These nations lived under the principle of the rule of law (*Rechtsstaat*), and they had developed, without the moral support of a legalized declaration of rights, a system of protection of civil rights against arbitrary government which made them in fact more "nomocratic" in substance than many of the formal democracies. All of them, however, and especially Germany and the Austro-Hungarian Empire, were ruled by a political bureaucracy which was rooted sociologically in the old traditional forces of aristocracy, plutocracy, and the army.

While, thus, arbitrariness in civil administration was absent, public opinion was not given an opportunity to exercise effective control over the government. The constitutional monarchy of the Central European type was admirable in civil administration, but highly objectionable from the viewpoint of political government. In Italy, parliamentary monarchy of the French pattern was functioning tolerably well, but the government was less democratized than in France, and was in the hands of a rather small political class of the aristocracy and the higher bourgeoisie, while the uneducated masses were scarcely interested in politics. We are justified in drawing the conclusion from these historical observations that in none of the dictatorships of today has democracy had a fair trial, or even a fair chance, over a period long enough to acquaint the bulk of the nation with the advantages of self-government as compared with autocratic rule customary formerly in these countries. Furthermore, the countries were transferred suddenly and without adequate preparation from the more or less benevolent paternalism of semi-absolutistic government to the possession of free democratic institutions, the successful operation of which needs the training of many successive generations. The subsequent return to authoritarian rule, therefore, did not mean for them the loss of a traditional freedom and the denial of rights for which the fathers had fought and died. Democracy did not appear to them as an indispensable element of national history. All great events of the national common experience were grouped around a

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monocratic figure. The special emphasis on the historical glory of their ancestors, which is so strong both in fascism and National Socialism, was not outweighed by the venerable memories of a democratic past. The absence of democratic traditions is significant also in Spain, in the Balkan states, and in the newly created states of post-war democracy. It will be apparent that countries devoid of democratic experience are more exposed to fascism than nations which enjoy a tradition of self-government.

On the other hand, the tradition of self-government over a long period is conspicuous in all countries which so far have remained loyal to democracy. We need not dwell on this point in the United States, which has lived for almost a century and a half under the protection of the same constitution, and which the wisdom of the fathers and the skill of the sons have made pliable enough to weather the storm in times of emergency. We may point also to Great Britain, where the visitor to Westminster Hall may look at the parchment embodying the death sentence of Charles I as a symbol of what historical experience has taught the British. Turning to France, we notice that royalism and monarchy have long ago become outmoded. In the memory of the small property owners of the peasantry and the middle-class bourgeois, there lingers still the recollection of where the two dictatorships of the nineteenth century ended, namely, at Waterloo and at Sedan. Democratic traditions are equally strong in most of the constitutional monarchies of Europe, not to speak of Switzerland, where the roots of genuine democracy reach perhaps more deeply into the frame of the country than elsewhere in the world. The existence of a democratic tradition must be considered as one of the most powerful promises for the maintenance of democracy in the countries of Europe which still adhere to parliamentary government.

Democratic tradition among the countries under parliamentary rule is lacking only in Czechoslovakia. Of the peculiar situation in this country, which, as a newly created state of precarious national integration, is theoretically exposed to a fascist regrouping of its present democratic structure, we shall speak later.

IV

Another point counts for much, namely, the fact that in many countries the magic spell of fascism has been broken by recent events in dictatorial states. There are in human history some dates

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which serve, without direct reference to the facts behind them, as symbols or as milestones of national history. Dictatorial governments are especially keen to fix public attention and public veneration on certain dates embodying a notable achievement of the régime. In Italy, October 27, the day of the march on Rome in 1922, ranks foremost in official commemoration. In Nazi Germany, November 9 (1923), when the abortive *Putsch* was launched, and January 30 (1933), when Herr Hitler was appointed *Reichskanzler*, are equally canonized.

It may be that another date will become memorable, but with a different ring. On June 30, 1934, the German *Führer* purged in his already famous "clean-up" the National Socialist party and state from many of his *çi-devant* best friends and comrades and from numerous of his old and new enemies, wielding the paramount power of the "Supreme Law Lord of the Nation" (*höchster Gerichtsherr der Nation*), and discarding the established rules of judicial process and regularized trial. The action has been vindicated *post hoc* and *propter hoc* by the minister of justice and the cabinet in a dictatorial decree called a law. The echo produced by the firing squads outside of the German borders was reverberating. Not only was liberal public opinion in democratic nations panic-stricken, but the fascist sympathizers in such countries were horrified by the action and its cynical "legalization" as *raison d'état*.

By a sudden flash, the "purge" revealed the intrinsic weakness of a governmental system which had to resort to such devices of self-defense. In the countries under the rule of law, the denial of a fair trial appeared all the more incomprehensible because a proved violation of the fundamental laws of Germany would have met a well-deserved expiation by the ordinary courts applying the ordinary laws, which had been especially sharpened for high treason and attacks against the state. The non-observance of due process made the public outside of Germany deeply suspicious, and the wholesale executions were considered as an act of sheer arbitrariness dictated by purely political considerations. Public opinion was not less repelled by these events than by Stalin's revolting methods of quelling an alleged conspiracy early in 1935. The efforts by which the more considerate members of the movement endeavored to reconcile the transitory activities of violence by a revolutionary government with the fundamental idea of the rule of law allegedly governing also the new German state were

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frustrated. For the world outside of Germany, the implications were even more fundamental. The leadership-principle is based on the quasi-theological assumption of the infallibility of the leader, who represents God on earth. Did the leader err in choosing his friends and intimate collaborators and promoting them to high office, or did he err in repelling them and sending them to the firing squad? In the eyes even of fascist sympathizers, the ideology of the infallibility of the leader and the corollary of obedient subservience to his wisdom was shattered. Sacrifices for the glory of the nation and the leadership idea were taken for granted, but does it mean the immolation of one's own life instead of the life of the acknowledged enemies of the state in the persons of the Socialists, Communists, Pacifists, and Liberals?

The action of June 30 had a sobering influence on the enthusiasts for dictatorial rule all over the world. They were in a position to compare what they denounced as the arbitrariness and lawlessness of an action declared a necessity of the state with the normal routine of jurisdiction in democratic countries where the time-honored guarantee of fair trial and the vigilant control of public opinion were still tangible achievements of democracy. The repercussions of the purge were deepened by the events in Austria which led to the assassination of Dolfuss and the outbreak of a bloody civil war among a population renowned for gentleness and amiability. World opinion blamed the National Socialists for the Austrian events, a charge which they could hardly disclaim against the evidence offered in the Austrian revelation of German complicity. In the light of June 30 and July 25, 1934, fascism had reached a crucial point in the evaluation of the sympathizers with autocratic rule, comparable perhaps to the Matteotti crisis in Italy, which, however, could not assume similar proportions because fascism at that time was a purely Italian affair, not yet claiming universal acceptance such as National Socialism had claimed from the outset.

These events had become a serious handicap to the further spread of fascism in democratic countries, especially in England and Switzerland. Even in Italy, where a spiritual solidarity with the ideals of Nazism had thus far subdued critical voices, the reaction was violent, and Signor Mussolini lifted for some time the pressure on the press in order to give vent to an indignation which unified the civilized world against this new conception of an act of

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state. The prestige of the model type of autocracy in Europe organized with the thoroughness and totalitarian connotations customary in Germany had suffered a heavy blow. Herr Hitler himself has demonstrated with unequalled emphasis what autocracy really means and what the result will be when the basic elements of civil order, justice, and equality before the law are regarded as "liberalistic" prejudices. In this respect, June 30, 1934, may become, like Thérmidor 9, 1795, a date of world-wide implication in so far as it has helped to bring recognition that an individual, endowed in the eyes of his followers with the qualities of a superman, is nothing other than a poor human creature given to error and misjudgment. In Germany, the repercussion of the action of June 30 was subsequently repressed by the death of President von Hindenburg and by the plebiscite of August 19, 1934; outside of the German borders, however, the object lesson of June 30 will not readily be forgotten and the *cesura* in the rise of fascism was clearly visible. By the act of June 30, Herr Hitler rendered a genuine service to democracy and the rule of law.

Another disquieting fact in the fascist aspirations in democratic countries is the manifest inefficiency of the dictatorial system to deal with the economic depression. More and more in democratic countries, where free discussion is still possible, the conviction grows that fascism no more than democracy has discovered a recipe to exorcise the crisis. Suspicions about the correctness of the figures describing the reduction of unemployment in autocratic countries are aroused. Objective travellers returning from Italy, Germany, or Russia (not to speak of other countries) do not conceal their critical observations on the lowered standard of living in dictatorial states, on the strained living conditions, the desperate efforts to control misery and hunger, the crushing tax burdens and the dwindling exports, the gloomy attitude of the bourgeois classes and the discontent of the farmers. In democratic countries, the skeptical business man compares his own situation, which is by no means gratifying under the pressure of the crisis, with the paradise promised and nowhere reached in the dictatorial states. The impression gains weight that autocracies, despite the vast volume of regimentation and over-organization, have, so far, not fared better in the crisis than countries under free government, that the totalitarian state fights depression no more effectively than democracy, where a concentration and delegation of powers by

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constitutional means such as in England, the United States, and recently in Belgium does not exclude the influence and the control of public opinion. For the average citizen in democratic countries, the living conditions in Russia would be unbearable, and he would scarcely change with a subject of the German totalitarian state.

This is true also for Italy, where the detrimental influences of the boycott on German trade and commerce, which offers a welcome pretext for explaining the retardation of recovery, are absent. Especially the corporative system, hastily adopted and highly praised in autocratic states, has so far shown no conspicuous results. Signor Mussolini is clever enough to act with extreme caution in its tentative introduction as an economic device. As a corollary of consultative character for popularly elected chambers, it may have its advantages, but it cannot be disputed that the corporative system has so far completely failed to give practical results in the daily economic life. Democracies agree that politically elected chambers are unfit for the swift and changing decisions which planned economy demands, but the remedy has been found in a regular delegation of powers in a manner sanctioned by constitutional development, and not in the building up of cumbersome new machinery which offers no real alleviation of the economic plight of the masses. On the whole, the actual operation and function of the corporative system are less obvious than its advertising values. Prosperity will not come back by regrouping of the social representation unless it is accompanied by a thorough reshaping of the whole economic fabric of the community. In democratic countries therefore, the slogan of the corporative state has already lost much of its attractiveness for the masses. The average man looks rather for the real amount of his wages or his income, and he becomes skeptical of the eulogies and the ideology of the corporative organization which are not corroborated by facts and figures. Here also the critical point seems to have been reached, and the fascist propaganda may still achieve a climax of the maximum but not of the optimum. Even in the economic field, the steadfastness of the allegedly outmoded democratic system may be slowly winning its way.

Finally, another encouraging feature in the battle between democracy and autocracy must be mentioned. The lamentable lack of resistance of democratic government to the attacks of the fascist enemy has already been emphasized as one of the decisive causes

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of fascist success. In some countries, the superiority of the fascist technique of undermining public opinion and preparing the inevitable *coup d'état* has been more effective than the actual aggression. In other democracies, however, governments recovering from the enchantment have recognized the situation and have successfully adopted the necessary measures to overcome the danger. Legislative measures against subversive propaganda and abuse of democratic liberties of free speech, free press, and free association were enacted and the necessary steps were taken to forbid the undermining practices of the fascists' propaganda, the forming of private armies, the wearing of party uniforms and badges in public, and the parading of the semi-military paraphernalia which are so essential for the initial display of fascist activities. It would be beyond the limits of our discussion to deal *in extenso* with the legislative and administrative measures successfully applied in Czechoslovakia, the Netherlands, Scandinavia, Belgium, and some other democratic countries against fascist activities. The example of the countries mentioned proves that democracy, becoming militant, can be saved; and when fascism uses with impunity democratic institutions to gain power, democracy cannot be blamed if it learns from its ruthless enemy and applies in time a modicum of the coercion that autocracy will not hesitate to apply against democracy.

[*To be concluded in the next issue*]

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NATIONAL SOCIALIST CONCEPTIONS OF INTERNATIONAL LAW

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When the German government announced on March 16 of this year that it no longer deemed itself bound by the disarmament provisions of the Treaty of Versailles, a great step was taken toward the realization of the demand for *Gleichberechtigung* which has been the main objective of National Socialist foreign policy. In view of the forthcoming conversations which had been scheduled to take place at Berlin, the time chosen for this decision was unexpected. The act of denunciation itself had been foreshadowed, however, by the withdrawal of Germany from the Disarmament Conference and the League of Nations, and by her actual rearming in defiance of the limitations of the Treaty. It involved no sudden innovation in policy, but was merely a public acknowledgment of the *fait accompli;* it marked the final stroke in one stage of a long and bitter campaign against the "*Diktat*" of Versailles.

The denial of Germany's equal status, Adolf Hitler has repeatedly affirmed, is the main cause for the political ferment of the post-war period.[1] A durable peace cannot be based upon "the unnatural perpetuation of the terms 'victor' and 'vanquished'."[2] "Treaties concluded for the pacification of nations with each other possess an inner meaning only when they are based on real and honest equality of rights for all."[3]

The struggle against the unequal provisions of the Treaty of Versailles has not taken the form of a mere demand for revision, which would imply that the disarmament provisions constitute a legal obligation which is not voidable by unilateral denunciation. Although its position has not been altogether consistent, the German government has rested its main case for equality in armaments upon the positive provisions of the Treaty itself.[4] The preamble to

[1] See, for example, Hitler's speech to the Reichstag, May 17, 1933. Schmidt and Grabowsky (ed.), *Disarmament and Equal Rights* (Berlin, 1934), p. 197 ff.

[2] Proclamation to the German people, Oct. 14, 1933. *Ibid.*, p. 217.

[3] Speech of May 17, 1933. *Ibid.*, p. 200.

[4] Hitler has stated that "no German government will of its own account carry out the breach of an agreement which cannot be removed without being replaced by a better one. This acknowledgement of the legal character of such a treaty

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Part V states specifically that Germany "undertakes strictly to observe" the restrictions therein imposed "in order to render possible the initiation of a general limitation of the armaments of all nations."[5] This provision, the German government contends, imposes a bilateral obligation to disarm. While Germany, it is stated in the proclamation of March 16, has loyally fulfilled its terms, "the redemption of the obligation on the part of the second partner to the treaty failed to become a fact. That means: The high contracting parties of the former victor states have one-sidedly divorced themselves from the obligations of the Versailles Treaty."[6] Part V, therefore, was voidable by Germany on the ground of non-performance of its terms by the other contracting parties.[7]

In appealing to the positive provisions of the treaty of peace, the German government has based its claims upon the legal ground that seems to be least vulnerable to attack. Its general contention, however, is based upon a wider claim to equal rights, as recognized by fundamental principles of international law. The absence of a narrow textual justification for equality, such as is contained in the preamble to Part V, would obviously not affect the substance of the German demands.[8] Equality is viewed, not only as a prin-

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cannot but be general. Not only the conqueror, but also the conquered party, can claim the rights accorded in the Treaty. But the right to demand a revision of this Treaty finds its foundation in the Treaty itself." *Ibid.*, p. 201.

[5] For discussions of the German case for equality as based upon the pre-Armistice agreement and Art. 8 of the Covenant of the League of Nations, see Viktor Bruns, "Deutschlands Gleichberechtigung als Rechtsproblem," *Beiträge zum ausländischen öffentlichen Recht und Völkerrecht*, Heft 21 (Berlin, 1934); Egon Gottschalk, "Der Rechtsbruch von Versailles," *Deutsche Juristen-Zeitung*, Vol. 38, pp. 1453–1459 (1933); Graf Westarp, "Deutschlands Austritt aus dem Völkerbund im Lichte des Rechts," *ibid.*, pp. 1389–1394; and Heinrich Rogge, "Wehrmacht, Frieden, und Völkerrecht," *ibid*, Vol. 40, pp. 387–391 (1935).

[6] For the text of the proclamation of March 16, see *International Conciliation*, No. 310 (May, 1935), pp. 264–270. See also Hitler's address to the Reichstag, May 21, 1935. *New York Times*, May 22, 1935.

[7] As a subsidiary legal ground for denunciation, the announcement of March 16 appeals to the doctrine of *rebus sic stantibus*, although not *eo nomine*. The recent increase in the strength of the Soviet army, it asserts, is "an element that at the time of the conclusion of the Versailles Treaty could not have been divined." In reply to this contention, it may be pointed out that "the interpretation of a treaty, by reference to the express or implied intention of the parties, one of whom claims the change of circumstances as a reason for the dissolution of the treaty, is hardly applicable to treaties in which the contention of one of the contracting parties was of little consequence, i.e., to treaties imposed by force." H. Lauterpacht, *The Function of Law in the International Community* (Oxford, 1933), p. 272.

[8] Professor Bruns, for example, in urging Germany's right to equality within the

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ciple of treaty interpretation, but also as an inherent and inalienable right possessing a higher moral and legal validity than the stipulations of treaties. The German government has not explicitly contended in its official pronouncements that such positive provisions as are considered to conflict with its claim to equality are thereby deprived of all legal force. Such a conclusion, however, is immanent in its general position. In pressing the demand for *Gleichberechtigung,* National Socialist spokesmen tend always to abandon discussion on the plane of positive law in order to invoke a higher standard of *"richtiges Recht."*[9] A confusion between law and morals, between the politics of law and the "law behind law," is characteristic of revolutionary thought. If its aspirations are denied by the existing legal system, the appeal is shifted to the *lex ferenda,* and thence, often by an unconscious substitution of ideas, to the "law of nature."

Since the establishment of the Third Reich, the revolt against the peace settlement has given rise in Germany to a considerable literature on fundamental problems of international law, in which an attempt is made to develop a coherent and systematic doctrine on the basis of National Socialist principles. Although the application of "Aryan creativeness" to international law has not resulted in signal contributions to legal science, these excursions into the realm of jurisprudence are of the greatest interest in that they render more explicit the implications of the government's contentions, which are only suggested in the more formal and guarded language of official diplomatic pronouncements. National Socialist disquisitions upon the law of nations regularly take the form of commentaries upon inspired texts chosen from the great *"Friedensreden"* of *der Führer.*[10] One writer, indeed, affirms the legal char-

League, asserts that "this equality in right and obligation is not a fortuitous, arbitrary creation of the Covenant of the League. International law and the society of states did not first come into existence on January 10, 1920." *Op. cit.*, p. 25. Also, "Der Beschluss des Völkerbundsrats vom 17. April 1935," *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht,* Vol. 5, p. 326 ff. (1935).

[9] *Reichsjustizkommissar* Dr. Hans Frank, for example, has stated in an address before the Academy of German Law that "the right of Germany to the Saar is the unconditional and perpetual natural right, unaffected by any treaty or exercise of force, of a mother to her child." *Völkischer Beobachter,* Nov. 14, 1934.

[10] See, for example, Graf Westarp, "Die Rede des Reichskanzlers am 17. Mai 1933 im Lichte des Rechts," *Deutsche Juristen-Zeitung,* Vol. 38, pp. 708–718 (1933). It is significant that the texts are uniformly chosen from the Leader's addresses on peace and equality, and not from his *Mein Kampf.*

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acter of international law for no better reason than that "Germany, through its Leader, has recognized it."[11] That National Socialist jurists have not been able to arrive at a unified and consistent construction is in large part due, one suspects, to the often contradictory utterances of the Leader himself.

The purpose of this article is to present a brief examination of the theories of international law now current in Germany, with a view to ascertaining the extent to which they are capable of furnishing a juridical rationalization of the government's campaign for equal rights. A further attempt will be made to determine the influence upon present thought of the traditional, "orthodox" doctrines of German legal science, and to state the theories which appear to be distinctively National Socialist. Only a cursory criticism and evaluation will be possible within the limits of the discussion.

National Socialist conceptions of international law are the expression of a violent reaction against the juristic idealism and normativism which have been characteristic of the leading schools of international legal thought in the period since the War. The existing theories, it is charged, hypocritically minimize the rôle of force in the relations of states, and serve as a deceptive cloak for the actual *Machtpolitik* of the heavily-armed Powers.[12] They have been employed as a means for the "scientific encirclement" of Germany and as a justification for the maintenance of a static legal system which obstructs Germany's legitimate demands for dynamic change.[13]

The conception which appears to be dominant in Germany seeks the basis for a "realistic" theory of international law in the monistic construction, with primacy of national law. This theory, which adopts the sovereignty of the State and the volitional origin of law as its starting points, is distinguishable from the positivist con-

[11] Ernst Wolgast, "Nationalsozialismus und Völkerrecht," *Zeitschrift für Völkerrecht*, Vol. 18, p. 130 (1934). International law, the same writer elsewhere states, is not merely German external public law, "for every understanding for which the Chancellor of the Reich strives in the international field presupposes the other states as having the same right and share in international life as the German Reich, and cannot, therefore, lead to a conception of international law as valid for us alone and proceeding only from the German will." *Deutsches Recht*, Vol. 4, p. 198 (1934).

[12] See Curt Rühland, "Staatsverträge und nationalsozialistische Rechtsauffassung," *Zeitschrift für Völkerrecht*, Vol. 18, p. 133 ff. (1934).

[13] See Hans K. E. L. Keller, "Völkerreich und Völkerrecht," *Europäische Revue*, Vol. 10, p. 425 (1934).

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structions which governed German legal thinking prior to the War only through its attempt to engraft National Socialist racial doctrines upon the orthodox conception of the State.[14] The traditional formulation of the nature of international law is perhaps most clearly expressed in Professor Otto Koellreutter's *Grundriss der allgemeinen Staatslehre*.[15] The point of departure for a realistic science of international law, Professor Koellreutter asserts, is a recognition of the sovereignty of the state, as "the fundamental postulate" of contemporary political life.[16] "Every conception of international law which corresponds with reality," he asserts, "must start with the realization that in international law political regulation has predominance over normative regulation to a far greater degree than in state law. International law is, in a most decided measure, political law."[17] The interests of the State, as the highest organized form of human society, must necessarily be given primacy over those of the international community; "it follows that in present-day international law the maintenance of states, and not the maintenance of the normative validity of individual rules, is the highest value in cases of conflict." For this reason, the *clausula rebus sic stantibus* constitutes "a far-reaching restriction upon international law, and must be brought into political balance with the interest of all states in the maintenance and efficacy of international treaties. In every case, the fundamental principle in the present-day world of states is that the national interests of individual states always precede international interests, that the nation (*Volk*) comes before humanity."[18]

The views of Herbert Kraus are fundamentally identical. For him, as for Koellreutter, the interests of the state are the highest legal and moral values. "International law is not the object of interests; international law, on the contrary, is created in the service of the interests of states."[19] The National Socialist con-

[14] Such doctrines of the positivist school as relate to the racial theory of international law are discussed below, p. 605 ff.

[15] Tübingen, 1933.

[16] *Ibid.*, p. 226. "Sovereignty in the legal sense is the capacity of exclusive legal self-determination in its internal and external manifestations," *Ibid.*, p. 61.

[17] *Ibid.*, p. 227. The "*reine Rechtslehre*" of Kelsen and Verdross is dismissed as a system which is based upon a "non-political pacifism unrelated to reality," "as fruitless as a non-political theory of the state." *Ibid.*, pp. 226, 227.

[18] *Ibid.*, pp. 229, 230.

[19] "Interesse und zwischenstaatliche Ordnung," *Niemeyers Zeitschrift für internationales Recht*, Vol. 49, p. 62 (1934).

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ception recognizes no interests beyond those of the individual state; it acknowledges no solidarity which might demand their sacrifice to those of the international community.[20] International law is "individualistic law," a "law of promises and not of command," and the "boundaries of individual international obligations are found in the fact that their fulfillment shall not violate interests of the state which are essentially vital."[21] "When the existence of the state is at stake, no sound state will hesitate to disregard legal principles which hinder the saving of its existence." International law, therefore, recognizes as fundamental rights the doctrines, of necessity and self-preservation, and national honor, which is the "unconditional and supreme value of the State."[22]

The above theories will readily be recognized as adaptations of the doctrine of auto-limitation, which has been given classic expression in the writings of Georg Jellinek.[23] This construction of the binding force of international law is an impossible attempt to reconcile state sovereignty, defined as legal omnicompetence,[24] with the existence of international law. Since the State is by definition the sole source of law, and since its sovereign will is subject to no limitations not imposed by itself, it follows that the State can be constrained to the observance of the rules of international law only by a voluntary act of self-obligation. Jellinek draws the logical conclusions from his premises: the State remains legally bound only so long as its will remains unchanged;[25] when the observance of a rule conflicts with State interests, the self-imposed obligation disappears, for "the State is superior to every juridical principle; . . . international law exists for states, and not states for international law; . . . the community of states, therefore, is of a purely anarchic nature," and international law is "anarchic law."[26]

[20] *Ibid.*, p. 30.

[21] *Ibid.*, p. 63. See also Kraus, "Das zwischenstaatliche Weltbild des Nationalsozialismus," *Juristische Wochenschrift*, Vol. 62, pp. 2418–2423 (1933).

[22] *Ibid.*, pp. 45, 46.

[23] On the history of the doctrine of auto-limitation, see Wiktor Sukiennicki, *La souveraineté des états en droit international moderne* (Paris, 1927), p. 171 ff.

[24] *Die Lehre von den Staatenverbindungen* (Vienna, 1882), p. 34.

[25] *Die rechtliche Natur der Staatenverträge* (Vienna, 1880), p. 39.

[26] *L'état moderne et son droit*, I (trans. by G. Fardis, Paris, 1911), pp. 562, 564. Hegel expressed the same conception when he said: "The relation of states is one of independent entities which make stipulations, but stand above their stipulations." *Grundlinien der Philosophie des Rechts*, § 330.

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Professor Kraus' views as to the fundamental nature of international law bear obvious resemblances to those of Eric Kaufmann, as set forth in his monograph *Das Wesen des Völkerrechts und die clausula rebus sic stantibus*.[27] International law, Kaufmann contends, is a law of coördination, *ein Vertragsrecht*.[28] The right of the state is coextensive with its power, on the principle that "he who can, may."[29] In case of conflict between State wills, force will decide on what side right lies. "In a legal system of coördination, war decides what interest was the stronger, behind which the greater moral energies stood; and this is not a termination of the legal condition, but the only conceivable and final proof of right in a law of coördination."[30] Treaties imposed by force, therefore, are as binding as those concluded voluntarily, but they lose their legal force as soon as the interested state has the power to free itself from its obligations.[31]

The above theories of international law, based upon the absolutist conception of sovereignty, constitute a merely verbal recognition of its legal character. The notion of legal obligation presupposes the existence of an objective rule superior to the wills of those who are to be bound.[32] An affirmation of the exclusiveness

[27] *Tübingen*, 1911.

[28] *Ibid.*, p. 160.

[29] *Ibid.*, p. 153.

[30] *Ibid.*, p. 179.

[31] *Ibid.*, pp. 178 ff., 179 ff. For a critique of Kaufmann's *Machttheorie*, see Leonard Nelson, *Die Rechtswissenschaft ohne Recht* (Leipzig, 1917), pp. 144–189.

That National Socialist jurists have not pursued their premises to their logical conclusions with the same temerity as did Kaufmann may be due to the fact that they feel impelled to keep within the ambit of the *Führer's* utterances, which, since January 30, 1933, have been of peace. Compare, for example, *Mein Kampf* (12th ed., Munich, 1933), p. 438, in which Hitler speaks of peace—not "a peace supported by the palm leaves of tearful, pacifistic, hired female-mourners, but resting upon the victorious sword of a people of rulers seizing the world in the service of a higher culture." See also the remarks of Dr. Helmut Nicolai, who points out that "Tiu, the Germanic god of law, bore the sword and was at the same time the god of war. This is no inconsistency or contradiction if we correctly understand the old-Germanic conception of law." War is "not a breach of law, but a legal action." It is "a legal claim which two peoples make to life. . . . The strong has a right against the weak; he has a claim that the weak make room for him. . . . But honorable struggle decides as to strength, and Fate decides who the victor is, who the victor must be, if the life of the better and stronger is not to be stunted. Therein lies the divine justice which in the end claims the victory for the valiant and forceful. The German piously bows to the decision of Fate if the stronger opponent conquers him—if, however, the victor treats the honorably defeated foe in a chivalrous manner." "Die Rassengesetzliche Rechtslehre," *Nationalsozialistische Bibliothek*, Heft 39 (1st ed., Munich, 1932), p. 19.

[32] See Alfred Verdross, "Le fondement du droit international," *Recueil des Cours de l'Académie de Droit International*, Vol. 16, p. 266 ff. (1927).

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of state sovereignty is equivalent to a negation of the possibility of such a rule. A monistic theory which traces all legal obligation to the sovereign will of the State contains an internal contradiction which logically results in a denial of the binding force of international law. The doctrine of auto-limitation, if carried to its ultimate conclusions, is indistinguishable from the view according to which international law is that part of the public law of each state which relates to its external interests and relations.[33] National Socialist jurists decisively reject the conception of international law as "*äusseres Staatsrecht*," on the ground that it destroys the legal character of international obligations;[34] they ignore the fact that their own monistic constructions, on the basis of the primacy of national law, reach an identical result.

In an attempt to avoid the denial of international law which is implicit in the theories discussed above, Dr. Gustav Adolf Walz advances a pluralistic construction, which, he claims, "corresponds most deeply to the National Socialist social and legal conception." International law, he asserts, is a law of coördination or "intercorporative law," and has as its political function the securing of the equality of sovereign states, which are the sole subjects of the international legal order.[35] Both monistic constructions are rejected, as having a common "liberal origin with an imperialistic aim." The doctrine of the primacy of national law is "ultra-positivistic" and "state-voluntaristic," and is based upon an exaggerated faith in the efficacy of legislative law. The primacy of international law and the conception of the *civitas maxima* is "un-National Socialist through and through," and cannot successfully conceal, under its normative guise, its "imperialistic levelling tendency."[36] From his

[33] Hans Kelsen, *Das Problem der Souveränität und die Theorie des Völkerrechts* (2d ed., Tübingen, 1928), pp. 171, 172. On international law as "äusseres Staatsrecht," see Philip Zorn, "Die deutschen Staatsverträge," *Zeitschrift für die gesamte Staatswissenschaft*, Vol. 36, p. 1 ff. (1880); Albert Zorn, *Grundzüge des Völkerrechts* (2d ed., Leipzig, 1903), p. 7ff.; and the recent revival of the doctrine by Ludwig Schecher, *Deutsches Aussensstaatsrecht* (Berlin, 1933), p. 21ff.

[34] Kraus, in *Juristische Wochenschrift*, Vol. 62, p. 2420 (1933); Wolgast, in *Zeitschrift fur Völkerrecht*, Vol. 18, p. 129 (1934); and *Deutsches Recht*, Vol. 4, p. 198 (1934); G. A. Walz, *Zeitschrift für Völkerrecht*, Vol. 18, p. 146 (1934); and *Völkerrecht und Völkerbund*, Vol. 1, p. 476, (1934); and E. Tatarin-Tarnheyden, *ibid.*, pp. 295–299.

[35] For a similar attempt at a theoretical construction of international law as "Koordinationsrecht," see Julius Hatschek, *Völkerrecht als System rechtlich bedeutsamer Staatsakte* (Leipzig, 1923), p. 1 ff.

[36] "Das Verhältnis von Völkerrecht und staatlichem Recht nach nationalsozial-

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definition of international law as "intercorporative law," Walz seeks to draw a number of important practical consequences. International law, which is obligatory for the state as an entity, becomes binding upon state organs and individuals through its reception as "national international law in a formal sense." By Article IV of the Weimar Constitution, "the generally recognized rules of international law are valid as binding constituent parts of the law of the German Reich." This provision, however, is to be interpreted according to National Socialist principles: only such rules as have received the specific consent of *Germany* shall be deemed enforceable therein as "German international law." It follows, Walz states, that the scope of international law, as an effective legal obligation for Germany, will be relatively modest, and will be for the most part concerned with merely technical rules.[37] Such a conclusion would satisfy the most extreme of positivists, and certainly vitiates Walz' protestations as to the legal character of international law. He further states that rules of positive international law which violate the fundamental German claim to *Gleichberechtigung* should be excepted from the application of the maxim that national law is always to be interpreted in such a way as to give full effect to international obligations, unless the intent of the legislator to the contrary is clear and unmistakable. "There is," he states, "a well-grounded occasion to make a sharp division between true international law, that is, international law resting upon the foundation of equality, and the international power-order of the so-called peace treaties, which is merely clothed in legal forms." To sanction the "imperialistic" legal system imposed on Germany by the victors in the World War through national law would be to disregard "genuine international law based on equality."[38] Walz here appeals to a standard of supra-positive or natural law. His method represents an indiscriminate mingling of irreconcilable approaches. His "intercorporative law," the specific character of which he nowhere makes clear, is, at bottom, a monistic system based upon the primacy of state law.

istischer Rechtsauffassung," *Zeitschrift für Völkerrecht*, Vol. 18, pp. 148–149 (1934); "Nationalsozialismus und Völkerrecht," *Völkerrecht und Völkerbund*, Vol. 1, pp. 476–478 (1934). Walz has developed his conception of international intercorporative law more fully in his "Wesen des Völkerrechts und Kritik der Völkerrechtsleugner," in Stier-Somlo's *Handbuch des Völkerrechts*, 1. Bd., 1. Abt. A, pp. 252–261.

[37] *Zeitschrift für Völkerrecht*, Vol. 18, pp. 150, 151 (1934).

[38] *Ibid.*, pp. 152, 153.

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Walz' conception must be reckoned among those which deny the legal nature of international law.[39]

To the extent that National Socialist writers reject the system of positive international law as a violation of the principles of justice and the fundamental rights of states, the foundation of their thinking is in natural law.[40] Their claim that the right to equality constitutes a higher principle of law, superior in validity to the provisions of unjust treaties imposed by force, is based upon an attempt to deduce the fundamental principles of international law from the essential nature of states and the international community. Professor Bruns' argument for *Gleichberechtigung* is a striking example of this deductive and *a priori* approach. The international community, he asserts, presupposes the existence of a number of independent states. Membership therein is the denial of the hegemony of one state over the others. Each state, therefore, is under an obligation to respect the independence and equality of others, and "reciprocity of this duty of respect is the expression of equal status, in the society, of equality in right and duty. Equality, therefore, is the principle of justice in the society of nations; consequently, whoever rejects equality denies the legal community of nations. . . . But only that state is independent which possesses the means of defending itself. Therefore, the possession of weapons is the presupposition of membership and the rights of membership in this social order."[41]

A similar method is followed by Professor Carl Bilfinger, who

[39] Compare Kelsen, *op. cit.*, pp. 187 ff., 198, note 3. Walz employs the pluralistic construction only as a means for determining the relation of international law to municipal law. As formulated by Heinrich Triepel, its principal exponent, this construction more closely approximated that of a binding system of international law superior to the will of individual states than did any other pre-war German theory. If his construction were deemed to conflict with the doctrine of state sovereignty, Triepel asserted, "then it is high time to embark upon an even more thorough revision of this notorious concept than that which it has recently met at the hands of competent persons." *Völkerrecht und Landesrecht* (Leipzig, 1899), p. 76, note. Walz evidently does not share this conclusion, and, in fact, his view as to the obligations imposed by Article IV of the Weimar Constitution implicitly reject it.

[40] See Sukiennicki, *op. cit.*, p. 129. Herbert Kraus has emphasized the derivation of National Socialist principles from "universal, transcendental ideas and ideals," *i.e.*, from natural law, in *Juristische Wochenschrift*, Vol. 62, pp. 2418–2419 (1933).

[41] *Op. cit.*, pp. 26–27. See also Bruns, "Rechtsgemeinschaft oder Herrschaftsgemeinschaft?," *Völkerrecht und Völkerbund*, Vol. 1, pp. 14, 17 (1934), and Hans K. E. L. Keller, "Völkerrecht von Morgen," *Zeitschrift für Völkerrecht*, Vol. 17, pp. 342–372 (1933).

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maintains that equality is "immanent in the conception of international law."[42] Since states are subject to no higher authority, they are independent and sovereign, and hence equal. When a state recognized to be sovereign enters into a treaty which assumes its continued existence as such, any attempt to diminish its equal status is devoid of legal effect. Consequently, any provisions which would restrict its right of self-defense, the free conduct of its foreign relations, or the principle of reciprocity, are legally invalid, since it is "impossible to treat one and the same state as being legally sovereign, but at the same time legally to restrict the foundations of its independence." Professor Bilfinger concludes that the Treaty of Versailles, in which Germany's existence as a sovereign state was recognized, is void in so far as it purports to restrict her right of self-defense. Germany demands under the Treaty "the recognition of her sovereign, equal status *in concreto*."[43]

The argument from equality as a fundamental right or axiom rests upon a confusion in the use of the terms "independent" and "sovereign." It involves an obvious *petitio principii*, since no conclusions can be deduced from the concepts of "independence" or "sovereignty" which are not already presupposed therein.[44] " 'Independence'," as Professor Brierly has observed, "is a negative, descriptive term, from which positive legal rights may not be legitimately inferred. Used as synonymous with sovereignty, it becomes associated with the notion of power uncontrolled by law."[45] Independent states are those which are subordinated directly to international law, and their sovereignty, in the relative sense, is merely the expression of their competence as derived from, and limited by, that law. This competence is essentially variable and depends, as to its scope and content, upon the development of international law and upon the conventions which the particular state may have concluded. Sovereignty is not a substantive source of law, and the competence of a "sovereign" state is to be determined only by a concrete analysis of the positive law, general

[42] "Zum Problem der Staatengleichheit im Völkerrecht," *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, Vol. 4, p. 485 (1934).

[43] *Ibid.*, pp. 485–486. See also Bilfinger, "Zur Lage des völkerrechtlichen Staatsbegriffs," *Völkerrecht und Völkerbund*, Vol. 1, pp. 408–413 (1934), and "Vertrag und Diktat," *Deutsche Juristen-Zeitung*, Vol. 39, pp. 881–884 (1934).

[44] See Kelsen, *op. cit.*, p. 216; and Nelson, *op. cit.*, p. 78 ff.

[45] *The Law of Nations* (Oxford, 1928), pp. 62, 64.

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and particular, which is binding upon a given state at a given time. The attempt to reason from independence to sovereignty, and thence to equality of rights, as illustrated by the above arguments, reveals an elementary confusion of thought.[46]

Abandoning all traditional approaches to the subject, a number of recent German writers have formulated a theory of international law on the basis of National Socialist doctrines as to race.[47] Law, according to Dr. Helmut Nicolai, the founder of the "racial school,"[48] is not an arbitrary creation; it is the expression of the legal conscience of the *Volk*. The function of the state, as the external or political organization of the people, is confined to the discovery of this living law (*Recht*) and its formulation as statute (*Gesetz*).[49] The *Volksgemeinschaft* is a natural community united by ties of race and soil (*Blut und Boden*);[50] it has, therefore, its own conception of law, which it can share only with those of like race. "Truth, loyalty, honor, and freedom" are the fundamental principles of Germanic law; applied to the field of international law, "they have the obvious consequence that the German people can

[46] See Josef L. Kunz, "The 'Vienna School' and International Law," *New York University Law Quarterly Review*, Vol. 11, pp. 399–400 (1934); Verdross, *op. cit.*, pp. 314–315; and Lauterpacht, *op. cit.*, pp. 95–96.

[47] See L. Preuss, "La théorie raciale et la doctrine politique du National-Socialisme," *Revue générale de droit international public*, Vol. 41, pp. 661–674 (1934), and "Germanic Law versus Roman Law in National Socialist Legal Theory," *Journal of Comparative Legislation and International Law*, Vol. 16, pp. 268–280 (1934), and the literature there cited.

[48] *Op. cit.*, *passim*, esp. pp. 44–45. Nicolai's views as to the racial foundation of international law, which are substantially those described below, are accepted and expounded in greater detail by Günther Kraaz, "NationalsozialistischeVölkerrechtsdenken," *Reichsverwaltungsblatt und Preussisches Verwaltungsblatt*, Vol. 55, pp. 9–11 (1934); Wolgast, in *Zeitschrift für Völkerrecht*, Vol. 18, p. 130 ff. (1934); Walz, *ibid.*, p. 146 ff.; Rühland, *ibid.*, p. 134 ff.; Kraus, *Juristische Wochenschrift*, Vol. 62, p. 2420 (1933); Dr. Bumiller, "Die nationalsozialistische Rechtsidee und das Problem des Völkerrechts," *Deutsches Recht*, Vol. 4, pp. 201–206 (1934); and Heinrich Richter, "Völkerrecht," *ibid.*, pp. 206–208.

[49] According to the National Socialist conception, the state is not the source of law, but a creation of law; it is "the form of existence of the natural-spiritual unity which we call the *Volk*." Julius Binder, "Der deutsche Volksstaat," *Recht und Staat in Geschichte und Gegenwart*, No. 110 (Tübingen, 1934), p. 21. See also Ernst Rudolf Huber, "Die deutsche Staatswissenschaft," *Zeitschrift für die gesamte Staatswissenschaft*, Vol. 95, p. 31 ff. (1934), and Hermann Göring, "Rechtssicherheit als Grundlage der Volksgemeinschaft," *Völkischer Beobachter*, Nov. 14, 1934.

[50] Koellreutter defines "Volk" as "eine biologische Lebenseinheit, als eine Naturgemeinsamkeit, für die Blut und Boden konstitutive Elemente sind." *Volk und Staat in der Weltanschauung des Nationalsozialismus* (Berlin-Charlottenburg, 1935), p. 11.

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never recognize anything as legal that contradicts this Germanic legal conception."[51] In an international community, composed of nations racially diverse, the indispensable foundation for the establishment of true legal relations, a common conception of law, is necessarily lacking. International law, therefore, must remain an imperfect and incomplete system, confined to a few external and technical rules.[52] Ineradicable racial barriers render forever impossible the creation of the *civitas maxima.* A closely-knit international community, based upon the possession of a common *Rechtsgefühl,* may be achieved only among Nordic peoples.[53]

Adoption of the racial theory as the foundation for the system of international law would, it is claimed, render possible the growth of a true law of nations based upon national communities, that is, upon racial groups organized in states.[54] A racial international law would constitute a negation of "every kind of political imperialism in foreign policy." It would be a renunciation of the "levelling of the various national groups through assimilation, such as was proclaimed during the nineteenth and twentieth centuries in the name of a liberal-humanitarian individualism."[55] As Adolf

[51] Richter, *op. cit.*, pp. 207–208. "It is not thereby asserted," Dr. Richter states, 'that the fundamental moral ideas of the German people are also to be considered as binding upon the so-called 'international community. . . .' It should never, and shall never, be our function to convert by example to German legal notions the negro republic of Liberia, or Abyssinia, or Red Russia, in order to construct a genuine society of nations of a universal character." German honor, he continues, requires the observance of the principle *pacta sunt servanda:* treaties legally concluded should be loyally carried out; however, the German *Volk* never consented to the Treaty of Versailles; its purported agents who signed it were *'falsi procuratores.'* " Nicolai reaches the same conclusion as to acts of the "November traitors" and the "anti-national" legislation and treaties of the Weimar Republic. *Op. cit.*, p. 50 ff.

[52] National Socialist Germany, it is argued, cannot for this reason enter into general agreements; its international legal relations should be regulated by bilateral pacts. See Rühland, *op. cit.*, p. 135 ff., and Heinrich Rogge, "Das Prinzip der 'unmittelbaren Verständigung,' " *Völkerrecht und Völkerbund,* Vol. 2, pp. 24–29 (1935).

[53] The racial theorists apparently find themselves at a loss to explain the singular lack of appreciation for National Socialism—by definition the purest expression of the Germanic spirit—shown by the Nordic Scandinavians. Kraaz admits some discouragement at the shocking breaches of racial solidarity, and hence of international law, which take place among Germanic peoples, as illustrated by the British seizure of the Danish fleet in 1807. He suggests that it may be due to the fact that the peoples involved are racially mixed. *Op. cit.*, p. 10.

[54] In such a reorganized international community, the German *Volk,* and, consequently, the German *Staat,* would have a population of at least eighty millions. It could be made still larger through the creation of a *Germanic* state.

[55] Walz, *Zeitschrift für Völkerrecht,* Vol. 18, p. 147 ff. (1934); also Heinrich Rogge,

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Hitler declared in his speech to the Reichstag on May 17, 1933, "Our boundless love for and loyalty to our own national traditions makes us respect the national rights of others and makes us desire from the bottom of our hearts to live with them in peace and friendship. We therefore have no idea of Germanization. . . . We look at the European nations objectively. The French, the Poles, etc., are our neighbors, and we know that through no possible development of history can this reality be altered."[56] National Socialism has no imperialistic aim, for the incorporation of alien racial elements into the German state could lead only to a breach of its national unity.

Whether, as claimed, National Socialist racial doctrine leads to the recognition of the equal rights of non-Germanic peoples may well be doubted. National Socialist policy with respect to the race problem has been based upon the unquestioned assumption of "Aryan" or "Nordic" superiority, and legislation conceived in this spirit has been enacted and drastically carried into effect. It is surely not unfair to judge the doctrine by the fruits it has borne and to express a certain skepticism as to the probability that a National Socialist régime would ever recognize the equality of peoples whom it has consistently branded as "inferior."[57] Any spêcific comment upon the racial theory of the foundation of international law must here be omitted as supererogatory. *Res ipsa loquitur.*

Although their methods differ widely, National Socialist jurists

"Das Prinzip der unmittelbaren Verständigung in Friedenspolitik und Völkerrecht," *Hochschule und Ausland*, Vol. 13, p. 19 (1935); and Rühland, *op. cit.*, p. 135.

[56] Schmidt and Grabowsky, *op. cit.*, p. 201. See also the speech of Dr. Paul Joseph Goebbels before the Polish Cultural Union, June 13, 1934. *Europäische Revue*, Vol. 10, p. 415 (1934). The National Socialist government does not admit that its activities in Austria constitute intervention in the affairs of a foreign people. See L. Preuss, "International Responsibility for Hostile Propaganda Against Foreign States," *American Journal of International Law*, Vol. 28, p. 664 ff. (1934).

[57] Compare the following statement as to "qualitative" and "quantitative" majorities, based on the race theory and applied to the question of national minorities: "In deciding the question as to the state condition of a determinate territory, not the quantity of the men living in this territory, but their quality, is to be considered. Let us assume that a million poverty-stricken men live in a territory by hunting and primitive agriculture; now one hundred thousand men standing upon a higher plane of culture wander in, take this land, and create for the original inhabitants new conditions of life. Who will be so unjust as to award this land to the million original inhabitants? Herein is revealed the inverted results to which the liberal idea of equality can lead." Kurt Lehmann, "Nationalsozialismus und Minderheitenpolitik," *Deutsches Recht*, Vol. 4, p. 210 (1934).

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are in unanimous agreement as to their ultimate aim—to furnish a justification, expressed in legal terms, for the repudiation of all provisions of the Peace Settlement which hinder the realization of what Germany deems to be her rightful claims. The most obvious justification is found in the positivist construction, which solves the problem through the simple negation of any system of international law that would legally restrict the conduct of sovereign states, and hence of Germany. Positivism is an attempt to limit the illimitable, to affirm the legal character of restrictions upon the state, while leaving it at the same time free to pursue its sovereign aims. Positivist writers seem naïvely convinced that there must be some way by which to establish the legal nature of obligations for other states which will not be binding upon their own. In its Anglo-American formulation, the positivist construction is a negation of international law; it is, however, merely a legal theory which attributes no supreme moral values to the interests of the sovereign state. It in no way denies the possibility of an international morality comparable in its binding force to law. German positivism, on the other hand, contains a philosophy of the state. "Here, its effect is to justify the positivist theory by arguing that the state has an absolute moral value beyond which we cannot go; that, therefore, the validity of international law must necessarily consist in its furtherance of that value. And, since the only judge of this furtherance must be the State (for, otherwise, it would cease to be itself the embodiment of absolute moral value), it follows that the State, in judging whether it should or should not accept as binding a proposed rule of international law, need have regard to its own interests only. In doing so, by reason of its assumed nature, it realizes the highest purposes at which it can aim. For in securing its own self-interest it is securing, also, the interest of that absolute moral value which it embodies."[58] Positivism, as an expression of juristic nationalism, assumes that one's own state can realize its will in a world of unfettered sovereigns. German writers, in appealing to a system in which war is the final recourse, must be prepared to accept the fact that a denial of international law is a denial of the existence of legal limitations upon the conduct of all states.

The racial theory arrives at an identical result; for international law, confined to a few technical and external rules, would leave to

[58] H. J. Laski, *The State in Theory and Practice* (New York, 1935), p. 195.

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settlement by force the vital questions which are the most provocative of conflict. It is not only a retrograde step in an already imperfect legal system, but it would renounce as a possibility and as an ideal any future improvement of international law. In the National Socialist interpretation, racialism is equivalent to positivism, with the *Volk* substituted for the state.

The naturalist conception attempts to base the German claims upon a supra-positive law which can be logically deduced from the essential nature of the international community. It has, however, unfortunate associations with the doctrine of subjective fundamental rights, interpreted at the sovereign discretion of the individual state. In insisting upon their inalienable and illimitable character, the naturalists deny the existence of an objective legal system which, in defining and limiting these rights, could impose upon all states the obligation to respect them. An individualistic system of so-called "fundamental" rights leaves the solution of conflicts to force whenever any state deems that its "self-defense" or "national honor" are endangered. Equality is thereby rendered illusory. A state situated as Germany has little to gain from a claim to fundamental rights which others may assert as well, and, perhaps, with preponderant force.

The recent German theories of international law will furnish a specious legal rationalization for any step which the National Socialist government, acting upon its conception of German interests, may choose to take. It is inconceivable that it should be otherwise under a nationalistic and totalitarian régime. The present state of German legal science is an indication of the thoroughness with which *Gleichschaltung* has been carried out. The world of scholarship is the poorer, but National Socialism now has a *Völkerrechtsanschauung*, conceived in its spirit and adapted to its aims.

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STATE CONSTITUTIONAL LAW IN 1934–35[1]

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Validity of Constitutional Amendments. The courts continue to scan with rather meticulous care the procedure for the adoption of constitutional amendments. Where the sole purpose of a proposed constitutional amendment under the initiative provisions of the constitution was to provide for the levy of a "syncrotax," or a tax on the basis of gross receipts in lieu of all other state taxes, a petition with a short title reading "initiative measure providing for adoption of gross receipts act" was held fatally defective in view of the requirement that every initiative petition have a short title showing the nature of the petition and the subject to which it relates.[2] But according to the supreme court of Florida, a proposal to amend the constitution need not have a title, need not be read on different days or at different times, and need not be concurred in by the governor. And the dissenting justices protested that the majority failed to uphold the requirement that a proposed amendment shall be entered upon the respective journals of the two houses with the yeas and nays, showing a three-fifths vote in favor of the amendment.[3] There must be, however, a violation of express constitutional requirements for the courts to interfere with the procedure in the adoption of amendments.[4]

When a constitution required that amendments be submitted so that the electors might vote for or against each amendment separately in order to prevent "log rolling" for constitutional amendments, the court refused to permit the submission of an amendment which enhanced the taxation of copper mines and of public utilities and provided for the establishment of a tax commission as a constitutional agency. The fact that all of the proposals related to taxation was deemed insufficient to meet the constitutional inhibition.[5]

Separation of Powers. The rule regarding the separation and non-delegation of powers was applied in accordance with the usual standards when an act authorizing commissioners in certain counties to accept compromise settlements of tax-sale certificates for 1931 and prior years was held void as an unlawful delegation of legislative authority to com-

[1] Edward Walther, research assistant in political science, gave invaluable aid in the preliminary analysis and selection of cases for this article.

[2] Boyd v. Jordan, 35 P. (2d) 533 (Calif., Sept., 1934).

[3] Collier v. Gray, 157 So. 40 (Oct., 1934). On the other hand, the requirement that the yeas and nays be entered upon the journals was held mandatory in Tipton v. Mitchell, 35 P. (2d) 110 (Mont., July, 1934).

[4] Gray v. Winthrop, 156 So. 270 (Fla. July, 1934).

[5] Kerby v. Luhrs, 36 P. (2d) 549 (Ariz., Oct., 1934).

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missioners relative to the disposition of state property,[6] and when a statute, attempting to confirm a judgment in a mandamus proceeding against the county commissioners for the payment of money, passed during the pendency of a writ of error, was held void as an attempt by the legislature to exercise judicial powers.[7] But the contention was not sustained that an act which reduced the number of judicial districts from nine to seven interfered with the independence of the judiciary and violated the principle of separation of powers. The provision of the constitution authorizing the creation of three judicial districts and empowering the legislature to increase the number thereof was held to imply the right to reduce the number of districts, on condition that the act should take effect only when judges' terms expired.[8]

An answer to the much mooted question as to whether portions of the N.I.R.A. are invalid was given by the Wisconsin supreme court. In passing on a state act modelled after the federal law, Chief Justice Rosenberry, speaking for the court, said: "It is difficult to conceive of a more complete abdication of legislative powers than is involved in this act." Following the reasoning of an earlier case,[9] the act was held to involve an unlawful delegation of lawmaking power.[10] On the other hand, despite objections on the ground of unlawful delegation of power, the impairment of the obligation of contracts, and violation of the due process of law clause, the California supreme court sustained the recovery act which adopted the federal N.I.R.A. for California and provided that codes adopted by the federal authorities for the operation of industry should automatically become California codes.[11]

When the legislature of Oklahoma provided that an appeal to the supreme court from the state board of equalization shall be "an administrative rather than a judicial appeal," and the supreme court, in hearing and determining the issue, shall sit in the same capacity as if it were a reviewing board of equalization, the supreme court refused to exercise this authority on the ground that it was a violation of the principle of the separation of powers. It was thought that when the state board of equalization has determined the valuation of property, the administrative proceeding has come to an end, and that an appeal to the supreme court required the exercise of judicial power and could not be declared administrative by the legislature. Citing the well-known federal prece-

[6] State v. O'Quinn, 154 So. 166 (Fla., March, 1934).

[7] Bigham v. State, 156 So. 246 (Fla., July, 1934).

[8] Brown v. Clark, 34 P. (2d) 17 (Wyo., June, 1934).

[9] State v. Whitman, 220 N.W. 929 (1928).

[10] Gibson Auto Co. v. Finnegan, 259 N.W. 420 (March, 1935). For approval of this reasoning by the federal Supreme Court, see Schechter Poultry Corporation v. United States, 55 S. Ct. 837 (1935).

[11] *Ex parte* Laswell, 36 P. (2d) 678 (Sept., 1934).

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dent, Hayburn's Case,[12] it was declared unalterable state law that the judiciary can be assigned only judicial acts to perform.[13]

An attack on a legislative act and a supreme court rule requiring graduates of law schools to pass an examination for admission to the bar in Louisiana was held futile, since the legislature cannot surrender any of the state's police power, which includes the power to prescribe minimum requirements for admission to the bar. The claim that the constitutional status of Tulane University precluded such a requirement for graduates of its law school was held without foundation. Despite the court's holding, it is insisted that the "power to prescribe ultimately the qualifications for admission to the bar belongs to the judicial department."[14] Approving the latter dictum, the supreme court of Vermont asserted that the court's inherent power of discipline is not derived from the constitution or necessarily from the statutes of the state. The privilege of practicing law was held not to be a vested or constitutional right, but a privilege burdened with the condition that the possessor thereof remain a fit and safe person to exercise it.[15]

Protection of Individual Rights. The constitutional provision relating to trial by jury, which has been subject to different interpretations, was held in Indiana as requiring a trial by a common law jury of twelve. Thus a provision enabling a trial in a city court by a jury of six qualified voters was held invalid. The lawmakers were reminded again that the state constitution must be interpreted in the light of the common law of England.[16] From a similar viewpoint, trial by jury was held not necessary for confinement to a state institution for feeble-minded persons after due notice and hearing before a court, since such procedure was not required in accordance with the common law.[17]

The privilege of "equal and inalienable natural rights" and the proper "pursuit of happiness," as guaranteed by the bill of rights, were duly preserved when the high judicial tribunal of Kansas declared void a city ordinance limiting the number of cats which an owner may keep in his residence to five, regardless of the distinctiveness of the character of the animals and the consequences of keeping them.[18]

[12] 2 Dallas, 409 (1792).

[13] *In re* Assessment of Kansas City Southern Ry. Co., 33 P. (2d) 772 (May, 1934).

[14] *Ex parte* Steckler, 154 So. 41 (La., March, 1934).

[15] *In re* Haddad, 173 A. 103 (June, 1934).

[16] Millers Nat. Ins. Co. v. American State Bank, 190 N.E. 433 (May, 1934).

[17] People v. Niesman, 190 N.E. 668 (Ill., April, 1934).

[18] Smith v. Steineauf, 36 P. (2d) 995 (Nov., 1934). Cf. also Ule v. State, 194 N.E. 140 (Feb., 1935), holding valid the Indiana hit-and-run drivers act as not violating the double jeopardy provision nor compelling a person to testify against himself.

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The supreme court of Alabama was again called upon to justify the procedure of the state courts in the notorious Scottsboro trials.[19] It was granted that the exclusion of negroes from the grand jury solely because of race or color in the prosecution of a negro denies accused the equal protection of the laws. But it was contended on behalf of the state that the accused negro has the burden of proof and the mere fact that no negro was on the grand jury that returned an indictment does not show discrimination.

Defendant objected to the administration of the law by the jury commissioners and presented proof which tended to show that in a long term of years no negro had been called for jury service in that county. On inquiry, the jury commissioners professed ignorance as to whether the names of any of the negro race were on the rolls. This objection was answered by the court with the declaration that the constitution does not require a mixed jury and that the jury commissioners under the law are accorded a wide discretion. They may exclude on the grounds of failure to possess requisite qualifications. On the record, it was held, there was no evidence to sustain the contention that negroes were excluded because of race.[20] This judgment was reversed by the Supreme Court of the United States.[21]

One of the most important cases during the year arose over the conviction of Angelo Herndon of an attempt to cite an insurrection contrary to the provision of the Georgia code, dating from Reconstruction days, making it an offense punishable by death or confinement in the penitentiary for any one to attempt, by persuasion or otherwise, to induce others to join in any combined resistance to the lawful authority of the state when the same is manifested by acts of violence. Herndon was found guilty of violating this provision, but the jury recommended mercy and fixed his punishment at from eighteen to twenty years.

It was claimed for the defendant that negroes were unlawfully excluded from the grand jury which indicted him and the petit jury which tried him. This contention was denied on the ground that occasionally negroes were called for jury service, and that their exclusion from more frequent service was on grounds other than race or color.

Another contention was that much of the evidence used to convict the defendant was secured as a result of an unlawful search and seizure, and hence should have been rejected as inadmissible. The arrest was made without a warrant, and documents found in Herndon's personal possession and in his room were turned over to the prosecuting officers and

[19] Cf. Patterson v. State, Powell v. State, and Weems v. State, 141 So. 195, 201, 215 (1932), and Powell v. Alabama, 287 U.S. 45 (1932).

[20] Norris v. State, 156 So. 556 (Oct., 1934).

[21] Norris v. State, 55 S. Ct. 579 (1935).

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were made the basis for the chief counts in the indictment. But despite decisions to the contrary in the application of the limitations of the search and seizure provision of the federal Constitution, it was asserted as the rule of the Georgia courts that articles taken from the person and the premises of the accused may be admitted against him, notwithstanding that they were discovered by an unlawful search and seizure. The federal precedents and procedure were held to be inapplicable to state trials.

The documents which were thus admitted in evidence purported to show that the defendant was an organizer for the Communist party, and that this party advocated racial and social equality for the negro and urged the confiscation of the land of Southern capitalists for the benefit of the negro farmers; and it was charged that the jury, in arriving at its verdict, gave undue weight to these so-called planks of the Communist party, with which the defendant was presumed to be in agreement.

As to the gravamen of the offense, it was held to be immaterial whether the authority of the state was in danger of being subverted or that an insurrection actually occurred or was impending. The fact that Herndon had actively espoused the cause of the unemployed, and had inspired a mass demand for an appropriation by the county authorities for their relief, was considered as reliable evidence of subversive efforts.

The extent to which popular feeling may warp the administration of justice is shown by the comment of Justice Bell that it was not shown directly that the accused ever distributed any literature except two classes of circulars of a more or less harmless character, and that the case depended largely upon circumstantial evidence. Precedents mainly arising during and immediately following the World War were cited to sustain the holding that there was no ground for a new trial.[22]

On a motion for a rehearing, Justice Bell further defined force as contemplated for an offense under the statute. The statute, he said, "does not include either its occurrence or its imminence as an ingredient of a particular offense charged." Nor would it be necessary to establish guilt to prove that the alleged offender should have intended that an insurrection should follow instantly or at any given time, but it would be sufficient that he intended it to happen at any time.[23]

DECISIONS ARISING FROM THE ENFORCEMENT OF EMERGENCY LEGISLATION

Violations of the Contract Clause. Though the immediate effect of the Blaisdell Case[24] was to give encouragement to the justices of the state

[22] Herndon v. State, 174 S.E. 597 (May, 1934). See note, 34 *Yale Law Jour.* (Nov., 1934) 1357.

[23] Herndon v. State, 176 S.E. 620 (Sept., 1934).

[24] Home Building and Loan Ass'n. v. Blaisdell, 290 U.S. 398 (1934).

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courts to seek justification for some of the emergency acts passed by state legislatures,[25] it is becoming apparent that the limitations by which the Supreme Court surrounded its approval of the Minnesota law afford good grounds for condemning similar emergency acts. Thus an act of the Wisconsin legislature prohibiting the commencement of actions except for foreclosure of indebtedness secured by a real estate mortgage was held void as impairing the obligation of contracts, as applied to holders of negotiable bonds secured by a trust deed. The Blaisdell Case was interpreted as holding that the states may change as they see fit the form of the remedy for the enforcement of contracts, provided that no substantial right secured by the contract is thereby impaired. Failure to limit the time during which the emergency act was to be in force and the absence of compensatory conditions to offset the impairment of contract rights were held to render the act fatally defective.[26]

In the opinion of the supreme court of Maryland, the obligation of contract clause is to be interpreted literally regardless of the economic or social consequences which may follow. A section of the law in force for a number of years gave the privilege of any fractional holder of a mortgage to institute summary proceedings for the foreclosure of the mortgage. The extra session of the legislature for 1933 passed an emergency amendment, to remain in effect for two years, providing that in cases submitted to the circuit courts of Baltimore, no decree shall hereafter be entered during the emergency unless such application is concurred in by the record holders of not less than 25 per cent of the unpaid mortgage debt. But in foreclosure proceedings by parties having only one-sixth share in a mortgage, the court refused to interfere with the proceedings at the instance of the holders of the remaining interests, and held the amendment void.

Though it was conceded that the legislature may change the remedy or the mode of enforcing the right as applicable to a mortgage contract, it is deemed essential that the remedy shall be "substantially equivalent in coercive force to that provided by law when the obligation was contracted." Since the emergency act seriously affected the right to proceed under a consent decree law, it was thought to impair the contract rights of the parties. "We have no doubt," said Judge Digges, "that the legislature gave expression to a generally recognized fact that an emergency

[25] See this REVIEW, Vol. XXVIII, p. 614, and decision of supreme court of Louisiana approving a mortgage moratorium law. Metropolitan Life Ins. Co. v. Norris, 159 So. 388 (Feb., 1935).

[26] Hanauer v. Republic Bldg. Co., 255 N.W. 136 (June, 1934). The reasoning of the Blaisdell Case was held controlling in Illinois in sustaining an act prohibiting suit on official bonds of custodians of public funds for a period not exceeding two years in which deposit accounts with closed banks were being liquidated. Town of Cheney's Grove v. Vanscoyoc, 191 N.E. 289 (June, 1934). For consideration of similar cases, see note, 48 *Harv. Law Rev.* (Nov., 1934) 126, 134.

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in economic affairs existed, but the constitutionality of acts cannot be tested or decided upon that ground." Instead, the court believed that the standard of the days of "economic prosperity must be applied."[27]

But the most direct refusal to follow the reasoning of the Blaisdell Case came from the supreme court of Texas. When called upon to interpret an emergency moratorium act, that court maintained that the constitution is "imperious, supreme, and paramount," and declared that despite emergency conditions and the authority to meet the same under the police power, the act could not be upheld in the face of the provision prohibiting the impairment of the obligation of contracts, for "the constitution and a controlling necessity antagonistic to its requirements cannot exist."

The Blaisdell Case, it was claimed, is not applicable because the bill of rights of the state constitution which contains the contract clause, excepts out of the general powers of government the authority to interfere with such rights. This was held to be an express limitation which the courts could not ignore. In the minds of the Texas judges, the meaning of the constitution was fixed when it was adopted and that meaning cannot be altered by interpretation. The effect of the constitutional provision and its current interpretation renders moratory legislation of every conceivable type void.[28]

At the same time, the Texas court held void as a legislative exercise of judicial power, and as in conflict with the contract clause, an anti-deficiency judgment law providing for judicial proceedings to reduce the amount of deficiency judgments to the difference between the actual value of the property sold under foreclosure and the amount of the sale price. In addition to the objections which resulted in declaring void the moratorium act, the justices condemned the deficiency judgment law as not confined to the period of the emergency.[29]

A different standard was applied by the court of appeals of New York when it held valid an act providing for the administration of mortgage investments of a company taken over by the superintendent of insurance,[30] the object of which was to protect the holders of interests of groups

[27] United States Mortg. Co. v. Matthews, 173 A. 903 (July, 1934).

[28] Travellers Insurance Co. v. Marshall, 74 S.W. 658 (Sept., 1934). See note, 13 *Texas Law Rev.* (Dec., 1934) 78, in which it is pointed out that the Texas moratorium law was substantially the same as the Minnesota law, so far as its validity under the contract clause is concerned.

[29] Langever v. Miller, 76 S.W. (2d) 1025 (Nov., 1934); Cf. 13 *Texas Law Rev.* 85 ff.

[30] When real estate values declined and mortgage guaranty companies were unable to meet their obligations, by court orders they were placed in the hands of the superintendent of insurance as a statutory receiver. It was to meet the un-

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of holders of mortgage investments until a plan could be devised for permanent administration of the investments. Though contractual rights as protected by existing laws were modified by the act, the court believed that an individual may not justly complain of a reasonable legislative invasion of his usual rights for the purpose of averting an immediate danger which threatens the safety and welfare of the community. Recognizing the conflict which judges must inevitably face in resolving controversies of this type as between the exponents of a form of literalism or verbalism, sometimes called "mechanical jurisprudence," and the followers of a practice well-known in Europe as that of "free legal decision," whereby it is the duty of the judge to participate actively in the process of continuous adaptation of the law to meet ever-recurring new conditions, Judge Lehman adopts the latter view and refuses to be bound by mechanical concepts of jurisprudence, which he regards as a poor guide for the adjustment of interests involved in such a controversy. He could see no reason why the economic interests of the state may not justify the exercise of its continuing and dominant protective power, notwithstanding interference with contracts. Nor could he conceive of an "unchanging yardstick," applicable under all circumstances, by which the validity of each statute may be determined.[31]

Other Emergency Measures. A number of significant emergency measures were upheld. Thus an unemployment relief fund act appropriating three million dollars to be derived from revenues received under the state liquor control act, and authorizing the issuance of certificates against the relief fund payable solely from the revenues of the liquor control act, was held valid. Constitutional inhibitions were deemed inapplicable because the certificates would not constitute obligations which the state was legally required to pay, if the special fund against which they were charged was exhausted.[32] A state act providing for the reorganization of closed state banks, which in effect released old stockholders who participated in a plan of reorganization and advanced new capital from part of a stockholder's liability, was validated. This act was held not to impair the obligation of contract, where the reorganization plan was substantially more beneficial to depositors than the continuance of ordinary litigation, and depositors could not show substantial prejudice.[33] And a

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satisfactory conditions created by this action that the Schackno Act above referred to was passed. See 43 *Yale Law Jour.* (April, 1934) 1007.

[31] People v. Title Mortgage Guarantee Co., 190 N.E. 153 (March, 1934).

[32] Moses v. Meier, 35 P. (2d) 981 (Ore., Sept., 1934). See contention of Chief Justice Rand, dissenting, that the anticipated profits from the liquor business will become part of the revenues of the state, and that the debt to be charged against them will be a part of the state indebtedness.

[33] Dunn v. Love, 155 So. 331 (Miss., June, 1934).

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measure requiring a coöperative central bank to establish a fund for the insurance of shares in coöperative banks was held not to be arbitrary and confiscatory.[34]

But when Governor Murray of Oklahoma issued an order remitting the penalty on delinquent taxes to all taxpayers, basing his action upon the pardoning power of the executive granted by the constitution and the authority connected therewith to remit fines and forfeitures, the supreme court held the order unwarranted, claiming that the governor could not absolve citizens from their ordinary civil liabilities.[35] And an act of the Florida legislature providing for judicial validation of bonds proposed to be refunded was denied validity because of the constitutional provision that counties and other political subdivisions should have power to issue bonds, other than refunding bonds, only after approval by the electorate. This provision was held an absolute limitation on the power of the legislature to authorize the creation of any new or additional obligations for local government divisions.[36]

The state of New Jersey authorized the establishment of a municipal finance commission to replace defaulting local governments, the commission to act as a receiver of insolvent corporations. When the creditors of a defaulting township taken over by the commission sought a mandamus to compel the levy and collection of taxes to meet their obligations, the supreme court, by a vote of seven justices to six, upheld the act. In matters of this kind, it was asserted, public duties must override those for the protection of the private rights of individuals, and for this purpose the legislature must be accorded a wide discretion in the exercise of the police power.[37]

The attempt of the legislature to extend the meaning and application of constitutional phrases was sternly rebuked in Girard v. Diefendorf. In this case, tax anticipation negotiable notes, issued by a school district under an emergency law, were held not to be the equivalent of school district bonds on which permanent educational funds could be loaned in accordance with a constitutional amendment permitting such funds to be loaned on district bonds. The legislative act, it was claimed, was skilfully drawn to bring tax anticipation notes within the meaning of the word "bond." Quoting Cooley's dictum that "a court or legislature which should allow a change in public sentiment to influence it in giving a written constitution a construction not warranted by the intention of its founders would be justly chargeable with reckless disregard of official

[34] Lowell Coöperative Bk. v. Coöperative Central Bk., 191 N.E. 921 (Mass., July, 1934).

[35] Holliman v. Cole, 34 P. (2d) 597 (June, 1934).

[36] State v. Citrus County, 157 So. 4 (Sept. 1934).

[37] Hourigan v. North Bergen Tp., 172 A. 193 (April, 1934).

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oath and public duty,"[38] the term "bond" was held to mean that which was understood by the common mind when the constitutional provision was adopted.[39]

With regard to the consequences of the impairment of contracts, the state and federal governments, it is claimed, are on a different basis. There is no express constitutional inhibition, such as that applicable to the states, which forbids Congress to pass an act violating the obligation of contracts. The states, therefore, must keep within some fairly well-marked lines in their attempts to change the terms or obligations of existing contracts. Thus an act, in so far as it permitted an insolvent drainage district to accept its past due bonds and coupons in payment of drainage taxes, thereby affecting the rights of holders of bonds issued before the enactment of the law, was held to impair the obligation of contracts.[40] And a law which at the time of the sale of state educational bonds provided for the levy and collection of a tax on the assessed value, rather than the taxable value of property, for the payment of the bonds, made it a duty to levy and collect such a tax which became an obligation of contract and could not be changed by the legislature to the injury of bondholders.[41] A 1931 amendment to the Oregon Code was also held void as a violation of the contract clause. By this amendment, the superintendent of banks, in taking possession of a bank for liquidation, was authorized to levy an assessment upon the stockholders of the bank for the amount of their liabilities, and for the purpose of such assessment the insolvency of the bank should be prima facie evidence that the assets of such bank were insufficient to pay its deposit liabilities by an amount at least equal to the capital stock of the bank. Because such assessments were made mandatory without regard to the actual assets and liabilities of a bank, and imposed additional liabilities upon stockholders, the amendment was regarded as in conflict with the requirements of the federal and state constitutions.[42]

REQUIREMENTS OF DUE PROCESS OF LAW AND EQUAL PROTECTION OF THE LAWS

Equal Protection Standard. The standard of equal protection of the laws was applied in a number of cases sustaining acts imposing license fees.[43] In supporting an act requiring security dealers to furnish bond or

[38] 1 *Constitutional Limitations* (8th ed.) 124.
[39] 34 P. (2d) 48 (Ida., May, 1934).
[40] Kercheval v. Ross, 7 F. Supp. 355 (Feb., 1934).
[41] State v. Cooney, 32 P. (2d) 851 (Mont., May, 1934).
[42] Hibernia Securities Co. v. Pirie, 41 P. (2d) 431 (Feb., 1935).
[43] Samuel Bevard Manuro Products Co. v. Baughman, 173 A. 40 (Md., June, 1934), sustaining the imposition of a larger license fee for the operation of pneumatic than for solid tire vehicles; Bowen v. Hannah, 71 S.W. (2d) 672 (Tenn.,

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other security as condition precedent to doing business, Chief Justice Davis said: "The economic interests of the state may justify the exercise of its continuing and dominant protective police power for the promotion of the general welfare, notwithstanding interference with lawful callings and even contracts."[44] Idaho's chain-store tax law was upheld in a decision based on the reasoning of the Indiana case,[45] in approving a provision exempting gasoline filling stations and distributing plants from a progressively graduated license tax on chain stores;[46] and a Michigan act, passed over the governor's veto, placing a graduated tax on chain stores with a similar exemption was also approved. The court held that a license tax was subject only to the constitutional requirement applicable to specific taxes, i.e., they shall be uniform upon the classes upon which they operate.[47] A New Hampshire act requiring licenses for itinerant vendors was held void on the ground that it applied to storekeepers occupying a regular place of business for the sale of goods;[48] and a Maine act imposing similar fees on itinerant vendors was condemned for exempting residents of the state and residents of other states imposing no burdens on Maine residents.[49]

Liberty of Contract. Justice Field's opinion in the Butchers' Union Case,[50] sustaining the right to engage in the ordinary callings of life as

May, 1934), regulating motor transportation agents acting as intermediaries between prospective travellers and private automobile carriers; Ravitz v. Steurele, 77 S.W. (2d) 360 (Ky., Dec., 1934), licensing and regulating those engaged in the business of making loans of $300 or less, exempting those engaged in automobile financing and refinancing; Carpel v. City of Richmond, 175 S.E. 316 (Va., June, 1934), ordinance requiring licenses of peddlers, exempting distributors of motor vehicle fuels and petroleum products, farmers, dealers in forest products, and producers and manufacturers; Laing v. Fox, 175 S.E. 354 (W. Va., June, 1934), a privilege tax on every person engaged in any business, profession, trade, or calling except persons engaged in agriculture, horticulture, or grazing.

[44] State v. Knott, 154 So. 143, 145 (Fla., March, 1934). See Riley v. Sweat, 149 So. 48 (1933), in which a similar act was declared void.

[45] State Board of Tax Commissioners of Indiana v. Jackson, 283 U. S. 527 (1931).

[46] J. C. Penney Co. v. Diefendorf, 32 P. (2d) 784 (April, 1934). A similar South Carolina chain-store law was upheld in Southern Grocery Stores v. South Carolina Tax Comm., 55 F. (2d) 931 (Feb., 1932). But see a decision of the Vermont supreme court condemning an act imposing a gross retail sales tax graduated according to the amount of gross sales from stores under a common ownership as a violation of the equal protection clause. Great Atlantic and Pacific Tea Co. v. Harvey, 177A. 423 (March, 1935). See note, 43 *Yale Law Jour.* (April, 1934) 1022, on the applicability of a chain-store tax to filling stations.

[47] Smith Co. v. Fitzgerald, 259 N.W. 352 (March, 1935). A similar decision was rendered by the supreme court of Oregon in sustaining an ordinance of the city of Portland. Safeway Stores, Inc. v. Portland, 42 P. (2d) 162 (March, 1935).

[48] Woolf v. Fuller, 174 A. 193 (June, 1934).

[49] State v. Cohen, 177 A. 403 (Feb., 1935).

[50] 111 U.S. 746 (1883).

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part of the inalienable rights guaranteed by the bills of rights of federal and state constitutions, was reinterpreted and applied in the case of Reynolds v. Milk Commission.[51] A state law established and authorized a milk commission to divide the state into markets, or milk sheds, and to fix the maximum and minimum prices for milk within such designated areas, and also provided for state control over the production of milk. On an appeal to set aside an injunction sought by the milk commission to prevent illegal distribution of milk, the supreme court declined to intervene on the ground that the milk business is not affected with a public interest, and that the state act violated the individual right to pursue a lawful calling.

Recognizing that this reasoning runs counter to the views of the majority of the Court in the Nebbia Case,[52] it is contended that this case was decided by a five to four vote of the justices, and is not to be considered controlling over a state court interpreting its constitution. It is also pointed out that the later federal decision of Hegeman Farms Corporation v. Baldwin[53] seemed to question the authority to fix a maximum price. The majority of the court realized that, in the opinion of many, their views are "antiquated, outmoded, and unsuited to the more abundant life that lies before us." To the minority, the challenged provisions of state and federal constitutions are quite similar, and hence federal precedents should have been regarded as controlling. Field's doctrine was followed also in two decisions invalidating ordinances prescribing hours for the opening and closing of barber shops. Four justices, dissenting from the majority view that the right to earn a livelihood cannot be so restricted, in the Washington case noted that the appellant insisted on keeping his shop open longer than the hours generally adopted by the trade. Under the changed conditions, this was considered an unreasonable demand.[54] A similar ordinance was held invalid as an interference with a vested property right, namely "good will," and hence involved a taking of property without compensation. This appears to be the first case in which damage to the good will of a business incidental to a closing ordinance was held to violate the Fourteenth Amendment.[55]

Police Power. Asserting the authority to define the police power, and therefore to decide whether an act promotes the comfort, safety, and welfare of society, the supreme court of Illinois held an amendment to the

[51] 177 S.E. 44 (Nov., 1934).

[52] Nebbia v. New York, 291 U.S. 502 (1934).

[53] 55 S. Ct. 7 (1934).

[54] Patton v. City of Bellingham, 38 P. (2d) 364 (Dec., 1934). See also State v. Johannes, 250 N.W. 537 (Minn., March, 1935).

[55] McDermott v. City of Seattle, 4 F. Supp. 855 (Oct., 1933); and cf. note, 47 *Harv. Law Rev.* (April, 1934) 1058.

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Vagabond Act void. This amendment declared persons reputed to be habitual violators of criminal laws, or reputed to act as associates or companions of such persons, or reputed to carry concealed weapons, to be vagabonds. The act was regarded as arbitrary and unreasonable, as in conflict with the liberty guaranteed by due process of law, and as clothing administrative officers with arbitrary and discriminatory powers. Objections were raised to the extension of the use of the word "vagrancy"—a term now largely abandoned in favor of new definitions of offenses—and also to the use of the phrase "reputed to be." It was declared to be the prime object of the due process of law clause "to protect persons against the ills arising out of the whims and caprices of officials."[56]

That the police power must be governed by the rule of reasonableness was asserted in a decision invalidating a statute prohibiting the exchange of bakery products previously delivered to dealers for the purpose of sale, or giving consideration in lieu of return or exchange. Though the purpose of the act was to prevent contamination and waste, in the opinion of the court, certain persons—particularly the large producers—were singled out and prevented from doing what members in the same class were permitted to do.[57]

Municipal zoning ordinances continue to be attacked on the ground of unconstitutionality; but, due both to improvements in the ordinances and changes in judicial attitudes, the ordinances are usually upheld. In Lombardo v. City of Dallas,[58] a zoning ordinance was approved in its general scope and dominant features, as well as with respect to its provisions authorizing the exclusion of gasoline filling stations from residential districts. Referring to a former ordinance which had met with judicial disapproval,[59] the court observed that this holding was not applicable, since the present ordinance avoided the fatal defects of the former. The establishment of dwelling or residence districts from which apartment houses were excluded was also held conducive to the general welfare. And the clause in an ordinance sometimes deemed particularly objectionable, namely, that a board of adjustment is authorized to determine "whether in any specific case unusual hardships might result if the strict letter of the ordinance were complied with," was held valid.[60]

But that the judicial hurdles must be carefully watched is evident in a few decisions. A zoning ordinance prohibiting landowners from changing a one-family house into a two-family house, where one-half of the resi-

[56] People v. Belcastro, 190 N.E. 301, and People v. Alterie, 190 N.E. 305 (April, 1934).

[57] State v. McKune, 255 N.W. 916 (Wis., June, 1934).

[58] 73 S.W. (2d) 475 (June, 1934).

[59] Spann v. City of Dallas, 235 S.W. 513 (1921).

[60] Freeman v. Board of Adjustment, 34 P. (2d) 534 (Mont., June, 1934).

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dences in the block consisted of two-family homes, was held void;[61] and the exclusion of garages and filling stations from a district zoned for commercial uses, although some adjacent property was zoned for residential purposes, was held an unreasonable exercise of the police power. The makers of municipal ordinances are again reminded that though both liberty and property are subject to control through the police power, it is for the courts to say when the power has been exercised in due regard for the public health, comfort, safety, or welfare.[62]

Regulation of Injunctions. The modern trend toward the limitation of the use of injunctions in labor disputes was approved by the New Jersey court of errors and appeals. Holding that the provisions of the N.I.R.A. do not deprive employees of the right to strike where their demand for a wage increase is refused, a restraining order of Vice-Chancellor Fallon was declared too sweeping in character. The order undertook to restrain not only unlawful conduct such as intimidation, but also peaceful picketing. In so far as peaceful picketing was enjoined, the order of the court was reversed.

The claim that in collective bargaining under the N.I.R.A. representatives of labor must be from among their own number was declared unwarranted, and the attempt to interfere with the affiliation of the local union with the American Federation of Labor was condemned. It was pointed out that the Fifth and Fourteenth Amendments protect the right to make contracts, and that in accordance therewith labor unions organized for legitimate ends are not to be interfered with. The law, according to Justice Heber, does not impose any limit upon the bargaining power which labor may acquire through a union.[63]

By similar reasoning, the Illinois anti-injunction law was held valid. Though it was contended that the Illinois courts were committed to the doctrine that peaceable picketing and peaceable persuasion are unlawful, such acts were declared not to be *per se* unlawful. Referring to the police power as not "a fixed quantity" but as "the expression of social, economic, and political conditions," this power was thought to be adequate to meet the changing conditions of modern society. The legislature was sustained in its effort to legalize peaceful picketing and persuasion, on the ground that it may prohibit what it deems harmful to the welfare of the people.[64]

[61] Merrill v. City of Wheaton, 190 N.E. 918 (Ill., April, 1934).

[62] State Bank and Trust Co. v. Village of Willmette, 193 N.E. 131 (Ill., Oct., 1934).

[63] Bayonne Textile Corp. v. American Fed. of S. Workers, 172 A. 551 (May 1934).

[64] Fenske Bros. v. Upholsterers' International Union, 193 N.E. 112 (Oct., 1934). See decision of court of appeal of Louisiana under a state anti-injunction law refusing to issue an injunction to restrain a labor union from peaceful picketing, Dehan v. Hotel and Restaurant Employees, etc., 159 So. 637 (March, 1935).

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An Arizona act passed to place the administration of certain phases of the labor laws of the state in accord with the N.I.R.A. was also held valid. The act as approved prescribed that persons doing manual or mechanical labor, and employed by or on behalf of the state or its subdivisions, should be paid a minimum wage to be fixed by the highway commission.[65] A former act with a similar purpose included the proviso that the wages to be paid should be "not less than the current rate of per diem wages in the locality where the work was performed"—a proviso held void on the ground of uncertainty by the federal Supreme Court.[66]

Protection to Vested Rights. Vested rights continue to be accorded judicial protection. A California act, declaring community property all property other than separate property, acquired by either the husband or wife or both after marriage, including personalty previously or subsequently acquired while domiciled outside of the state, was held void as disturbing husband's vested rights, abridging citizens' privileges and immunities, and taking property without due process of law. Justice Langdon, dissenting, claimed that the real issue was the testamentary disposition of property after death, over which the state has full control.[67] Nor can a legislature by a retroactive statute cure void mortgages on homesteads where the wife had not acknowledged the instrument. Retrospective acts, not being condemned by the constitution, are deemed valid; but they cannot sanction curative acts intended to validate void mortgages.[68] Right of action for death, however, was held statutory, and not in the nature of a vested right. Hence the legislature could abolish a cause of action against an owner or operator of an automobile for the death of a gratuitous guest unless the accident was intentional, or due to willful or wanton conduct.[69]

When the voters of Massachusetts, by the adoption of a constitutional amendment, attempted to overcome the effects of an adverse decision[70] holding that the legislature had no authority over outdoor advertising on privately owned land within public view, the advertising companies continued to resist the exercise of public regulation over this type of business. The rules and regulations of the department of public works

[65] State v. Anklam, 31 P. (2d) 888 (April, 1934).

[66] Connally v. General Const. Co. 269 U.S. 385 (1926). See State v. Garfield Building Co., 3 P. (2d) 983 (1931).

[67] *In re* Thornton's Estate, 33 P. (2d) 1 (May, 1934).

[68] Acklin v. First Nat. Bank, 254 N.W. 769 (N. Da., May, 1934). Cf., also, note, "Judicial Treatment of Retrospective Legislation," 44 *Yale Law Jour.* (Dec., 1934) 358.

[69] Hazzard v. Alexander, 173 A. 517 (Del., June, 1934). A former statute failing to distinguish between ordinary and gross negligence was held void. Coleman v. Rhodes, 159 A. 649 (1932).

[70] Commonwealth v. Boston Advertising Co. 188 Mass. 348 (1905).

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authorized to carry out the popular mandate relative to outdoor advertising were attacked as invalid. But the Massachusetts justices did not regard the right of promoting patronage or of obtruding inescapable propaganda as a "natural right" beyond public control. They believed that good taste and scenic beauty may be given appropriate consideration, and held valid the allegedly offensive regulations as intended for the public safety and public health and to keep the highways free from annoyance. "That beautiful scenery is of economic value to the commonwealth," notes Chief Justice Rugg, "may be subject of judicial notice."[71] Though in prior cases the courts have generally held against the validity of such regulations, on the ground that aesthetic interests have no substantial relation to the public welfare, the tendency in recent decisions is to give greater weight to aesthetic considerations.

The supreme court of Tennessee upheld an act requiring railroads to bear one-half the expense of the elimination of grade crossings, regardless of the fact that it was claimed that changed economic and transportation conditions rendered such an act unreasonable. Such questions were deemed not within the scope of the court's function.[72] Basing his reasoning upon the marked changes in transportation conditions, Justice Brandeis, speaking for the federal Supreme Court, reversed the judgment of the state court.[73] In Illinois, authority to control the alteration or abolition of grade crossings was placed in the hands of the commerce commission. Contracts made by cities with railways were held subject to the paramount authority of the commission established by the legislature to deal with this matter.[74]

Validity of Acts to Levy Taxes. The issue as to whether an income tax is a property or excise tax remains unsettled as the states are turning increasingly in the direction of this type of tax. A Montana graduated income and surtax which had been sustained by the supreme court[75] was again subjected to attack by recalcitrant taxpayers. But the court followed its earlier holding with the observation that the tendency in recent decisions is to rule that income is not property, and that such taxes are not restricted by the uniformity provisions of the state constitution. The exemption of corporations was held not to involve the denial of equal protection of the laws; nor were the retrospective features of the act considered objectionable. Discriminatory provisions in the application of the surtax were declared arbitrary and therefore void.[76] An act of Indiana

[71] General Outdoor Adv. Co. v. Dept. of Public Works, 193 N.E. 799 (Jan., 1935). See note, 48 *Harv. Law Rev.* (March, 1935) 848.

[72] Nashville, C. & St. L. Ry. v. Baker, 71 S.W. (2d) 678 (May, 1934).

[73] Nashville, C. & St. L. Ry. v. Walters, 55 S. Ct. 486 (1935).

[74] City of Chicago v. Illinois Commerce Comm., 190 N.E. 896 (May, 1934).

[75] O'Connell v. State Board of Equalization, 25 P. (2d) 114 (1933).

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placing a levy on incomes from personal services as well as from trades, businesses, or commerce, the rates varying from one-fourth of one per cent to one per cent, was held valid. Chief Justice Fansler quoted the comment of Cooley as representative of the general view prior to the Pollock Cases[77] that "the better rule seems to be that an income tax is not a tax on property within a constitutional requirement that taxation on property shall be in proportion to value."[78]

Applying the general doctrine as to the validity of tax exemptions, the Vermont supreme court upheld the right of exemption from taxation of the property of an insane hospital which was not operated for gain or profit. Though none of the patients were cared for without charge, the property was held to be used for a charitable purpose. The court contended, on the basis of federal court decisions, that when not forbidden by the constitution, any stipulation in the charter of a corporation providing for an exemption of private property from taxation, which has been accepted and acted upon by the corporation, will be considered as an inviolable contract.[79]

Various tax laws were held to be in conformity with the principle of the equal protection of the laws. Thus a refunding act levying an excise tax on motor vehicle fuel was held valid as a privilege tax;[80] a gross sales tax of one-twentieth of one per cent to approximately one per cent on sales of more than a million dollars was declared to involve neither unreasonable classification nor confiscation;[81] and Georgia's occupation privilege sales tax was held not to violate due process of law or equal protection of the laws.[82] But an act subjecting to taxation cemetery lands owned by corporations, whereas similar lands owned by individuals were exempted,[83] and one taxing vending machines, with an exemption for pay toilets and sanitary drinking machines,[84] were held void.

A statute imposing a tax on the privilege of engaging in business activities as applied to municipalities engaged in the operation of street rail-

[76] Mills v. State Board of Equalization, 33 P. (2d) 563 (May, 1934).

[77] Pollock v. Farmers Loan and Trust Co., 157 U.S. 429 and 158 U.S. 601 (1894).

[78] Miles v. Dept. of Treasury, 193 N.E. 855 (Jan., 1935). The Indiana intangible tax and gross income tax law was sustained in Lutz v. Arnold, 193 N.E. 840 (Jan., 1935), as was also a Vermont income and franchise tax law in Colgate v. Harvey, 175 A. 352 (Nov., 1934).

[79] Brattleboro Retreat v. Town of Brattleboro, 173 A. 209 (May, 1934).

[80] Sparling v. Refunding Board, 71 S.W. 182 (Ark., May, 1934). See dissent of Justices Smith and Butler holding the tax to be on property particularly with respect to fuel used for other than highway purposes.

[81] Steward Dry Goods Co. v. Lewis, 7 F. Supp. 438 (Dec., 1933). See reversal of this decision by the Supreme Court of the United States, 55 S. Ct. 525 (1935).

[82] Standard Oil Co. v. State Revenue Commission, 176 S.E. 1 (Aug., 1934).

[83] Mt. Hope Cemetery Co. v. Pleasant, 32 P. (2d) 500 (Kan., May, 1934).

[84] *Ex parte* Day, 76 S.W. (2d) 1060 (Tex., Oct., 1934).

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ways, light and power plants, water systems, and similar public utilities was held not to contravene the constitutional exemption from taxation of property of municipal corporations.[85]

Public Officers and Administrative Law. The scaling down of salaries of public officials which has come as a result of the current depression has called for rather frequent legal interpretations. An Iowa salary-reduction act was condemned, mainly on the ground that there was no reference in the title to the section reducing the compensation of the members of the assembly and the lieutenant-governor. The elimination of objectionable sections was held to invalidate the entire act, owing to the omission of a saving clause.[86] A reduction of the salary of state health officers by legislative act was upheld in Alabama. Though in this case the state health board entered into a contract for a five-year period, such a contract by a subordinate governmental agency was considered subject to change by legislative action.[87] The economic loss and hardship entailed by special sessions of the legislature could not be relieved by an act granting an extra allowance for expenses where the compensation of members of the legislature for the year is fixed and an "inexorable" constitutional provision forbids the change of compensation of an official during his term of office.[88]

All of the justices of the supreme court being disqualified due to personal interest, a special court was appointed to pass upon the budget act of Alabama with its salary reduction provisions. The act provided that appropriations, with a few designated exceptions, were to be conditional, with an arrangement for prorating without discrimination against any department, institution, or agency, of available revenues if insufficient to pay all appropriations in full. This provision was held to be restricted to appropriations required to be allotted by the governor and not applicable to constitutional and statutory officers. Judges' salaries, the special court found, cannot be diminished during continuance in office.[89]

Questions relating to the right to hold public office were considered by the courts of several states. Claiming that the legislature did not have authority to add to the qualifications for a constitutional office, an elected state treasurer refused to give a bond as required by statute. After the statutory period for qualification expired, the governor appointed another

[85] City of Tacoma v. Tax Commission, 33 P. (2d) 899 (Wash., May, 1934). Cf. dissent of three justices based largely on previous decision in Cascade Telephone Co. v. Tax Commission, 30 P. (2d) 976 (March, 1934).

[86] Smith v. Thompson, 258 N.W. 190 (Dec., 1934).

[87] Hard v. State, 154 So. 77 (March, 1934). Justices Knight and Thomas dissented on the ground that the legislature authorized the making of a binding contract.

[88] State v. Macy, 190 N.E. 463 (Ohio, April, 1934).

[89] Abramson v. Hard, 155 So. 590 (May, 1934).

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man to the office. In passing on the question whether there was a vacancy, so that the governor could make a lawful appointment, it was held that the requirement of a bond by a legislative act for a constitutional officer was valid. The authority to determine the duties of an office was thought to imply the power to require a bond. As a consequence, the refusal to give bond within the period fixed by the legislature created a vacancy which the governor was authorized to fill.[90]

When persons duly elected to the state senate accepted appointments to other offices, the rule of incompatibility, namely, that the acceptance of the second office operates as a resignation of the first, was held not to be applicable to members of the legislature. The court therefore would not issue a mandamus to the presiding officer of the senate for a writ of election to fill a vacancy, which, in the opinion of the senate, did not exist.[91]

It became the duty of the courts of North Dakota to assist in settling some of the difficulties arising from the conviction of the governor for a conspiracy to defraud the federal government. Though the sentence of fine and imprisonment was stayed while an appeal was pending and the attorney-general refused to file a petition for a quo warranto, the lieutenant-governor applied for the writ on his own behalf. The contention that the issuance of the writ would be an invasion of the legislature's exclusive power of impeachment was denied, as was also the claim that a conviction in the federal courts does not affect the qualifications for a state office. Sustaining its jurisdiction, the court held that a person convicted of a felony is not a qualified elector, and therefore by the constitution is ineligible to serve as governor of the state. An appeal from such a conviction could not suspend the disqualification.[92]

The enforcement of the Pennsylvania retirement act for employees of counties of the second class was resisted with an attack on the validity of all retirement acts. Authority for the requirement that the commissioners pay into the pension fund each year not less than one-half of one per cent, and not more than two per cent, of all available moneys received by the county as taxes, was held to come under the power of the general assembly to legislate on matters which are not interdicted by the constitution. The legislature was declared to be the "sole judge as to laws that are in the interest of the public and have a tendency to procure for its

[90] State v. Christensen, 35 P. (2d) 775 (Utah, Sept., 1934).

[91] State v. Corley, 172 A. 415 (Del., April, 1934).

[92] State v. Langer, 256 N.W. 377 (Sept., 1934). Justice Moellring, dissenting, believed that the language of the constitution applied only to offenses committed against the laws of the state. Cf. note, 48 *Harv. Law Rev.* (Feb., 1935), in which it is pointed out that the decision of the court, though desirable from the standpoint of public policy, is not as well supported by legal precedents as is the view of the dissenting justice.

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people more competent and better performed public service." Retirement pay was regarded as "adjusted compensation," presently earned, which, with contributions from employees, is payable in the future, and hence it is not extra compensation as contemplated in the constitution.[93]

As was to be expected, those in charge of the management of public utilities who defended before the courts and secured the adoption of the "reproduction-cost-theory" as the primary basis for the valuation of utility properties for rate-making purposes[94] at a time of rising prices are now turning to historical or book cost as a better criterion to sustain present rate schedules. A commission's order reducing the rates of a telephone company was enjoined as confiscatory because the earnings of the company on fair value would be less than four and one-half per cent. Insisting that fair value must be determined from the special facts and circumstances of each particular case, the court observes that we do not consider the cost of reproduction so reliable for valuation of a public utility as book costs. On the issue of confiscation, the court deemed it necessary to exercise its own independent judgment of the law and the facts.[95]

Despite a legislative mandate, it was held again that a state cannot convert a private carrier into a public utility or common carrier, so as to subject him to the jurisdiction of the public service commission. On this ground, persons hauling milk and cream consigned by members to a coöperative association for sale under contracts and for persons designated by the association were declared not to be common carriers and subject to regulation as such.[96]

To many lawyers and judges, the decline in the respect and consideration for constitutional phrases as formerly understood is one of the most disturbing tendencies in American life. This view was emphatically presented in the dissenting opinion of Justice McReynolds in the "Gold Cases."[97] And before a number of recent decisions, writers were beginning to comment on the "twilight of the Supreme Court."[98] One of the state

[93] Retirement Board of Allegheny Co. v. McGovern, 174 A. 400 (June, 1934).

[94] See Indianapolis Water Co. v. McCardle, 272 U.S. 400 (1926).

[95] Chesapeake & Potomac Telephone Co. of Baltimore City v. West, 7 F. Supp. 214 (May, 1934). For consideration of this case by the federal Supreme Court, see West v. Chesapeake & Potomac Telephone Co., 55 S. Ct. 894 (1935).

[96] *Dairymen's Coop. Sales Ass'n v. Public Service Comm.*, 177 A. 770 (Pa., April, 1935).

[97] See Justice McReynold's opinion in Norman v. Baltimore and O. R. Co., 55 S. Ct. 407 (1935). Warning of the impending peril is given in the dictum that "to let oneself slide down the easy slope offered by the course of events and to dull one's mind against the extent of the danger, . . . that is precisely to fail in one's obligation of responsibility."

[98] See Edward S. Corwin's book by this title (Yale University Press, 1934).

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justices was so impressed by the tendency to disregard constitutional formulas that he expressed his alarm in poetic language.[99] But despite the indications that the language of fundamental written instruments may be given a rather free and liberal interpretation to permit governments to meet emergency conditions, a rather virile and effective constitutionalism continues to confine the operations of government within well marked ambits.

[99] J. Elbridge of Mississippi, dissenting:

> Goodbye, dear old Constitution, I hate to see you go
> You have been a good companion; I have learned to love you so.
> Give me your parting blessing before I breast the wave
> Of Revolution's stormy waters, Caprice's rebellious slave:
> Before I face advancing Anarchy's dark tempestuous tide,
> With no friendly port to shield me, and no polar star to guide.

Dunn v. Love, 155 So. 331 (Miss., June, 1934), involving the consideration of an act providing for reopening of closed banks. Cf. *supra*, note 33.

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Organization of the Executive Branch of the National Government of the United States: Changes between December 15, 1934, and June 16, 1935. In the December, 1933, issue of this REVIEW, pp. 942–955, appeared a tabular review of the changes in major units of the national government between March 4 and November 1, 1933. In the April, 1934, issue, pp. 250–254, appeared a supplementary list showing the changes between November 1, 1933 and March 1, 1934. In the October, 1934, issue, pp. 872–874, a second supplementary list showed the changes between March 1 and June 30, 1934; and a third supplementary list in the February, 1935, issue showed changes between June 30 and December 15, 1934. The present list indicates the reorganization effected and new units created between December 15, 1934, and June 16, 1935. As in previous lists, mention is made of units only specifically authorized by law or established by the President under general authority vested in him.

New Agencies

Division of Applications and Information, the Advisory Committee on Allotments, the Works Progress Administration. In order to supervise and coördinate the expenditures authorized by the Emergency Relief Appropriation Act of 1935 (Public Resolution No. 11, 74 Congress), approved April 8, 1935, the President by Executive Order No. 7034 of May 6, 1935, created the Division of Applications and Information, the Advisory Committee on Allotments, and the Works Progress Administration.

The Division of Applications and Information of the National Emergency Council is to receive applications for projects and forward them to the Advisory Committee on Allotments and furnish information to the public on the allotments made and on the progress of the work. It will be under the general supervision of the executive director of the National Emergency Council.

The Advisory Committee on Allotments is to make recommendations to the President with respect to the allocation of funds made available by the Emergency Relief Appropriation Act of 1935. This committee consists of the Secretary of the Interior, chairman, eighteen ex-officio members who head other government units, and five members who are not designated by name, but who will be representative of the Business Advisory Council, organized labor, farm organizations, the American Bankers' Association, and the United States Conference of Mayors. By Executive Order No. 7056 of May 28, 1935, the Deputy Administrator of the Federal Emergency Administration of Public Works was added to the committee. The appointed members of the Committee were designated by Executive Order No. 7068 of June 8, 1935. By Executive Order

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No. 7086 of June 26, 1935, the Executive Director of the National Youth Administration was added to the Committee.

The Works Progress Administration is to be responsible to the President for the "honest, efficient, speedy, and coördinated execution of the work relief program as a whole, and for the execution of that program in such manner as to move from the relief rolls to work on such projects or private employment the maximum number of persons in the shortest time possible." The Works Progress Administration is given broad powers to require reports of progress, to make recommendations to the President, to eliminate delay, to prescribe rules and regulations governing selection of persons for employment, to investigate wages and working conditions, and to carry on small useful projects designed to secure a maximum of employment in all localities. The Federal Emergency Relief Administrator is designated to serve as administrator of the Works Progress Administration.

National Youth Administration. Created by the President by Executive Order No. 7086 of June 26, 1935, with the following duties: "To initiate and administer a program of approved projects which shall provide relief, work relief, and employment for persons between the ages of sixteen and twenty-five years who are no longer in regular attendance at a school requiring full time, and who are not regularly engaged in remunerative employment."

The same order also created a National Advisory Committee and an Executive Committee for the National Youth Administration. The members of the Advisory Committee are to be representative of labor, business, agriculture, and youth, and to be appointed by the President. The Executive Committee is also to be appointed by the President. Miss Josephine Roche, Assistant Secretary of the Treasury, is designated chairman of the Executive Committee, but the other members are not named in the order.

The National Youth Administration is under the general supervision of the Administrator of the Works Progress Administration, and Aubrey W. Williams, Deputy Administrator of the Federal Emergency Relief Administration, is made executive director.

Puerto Rico Reconstruction Administration. The Puerto Rico Reconstruction Administration was established as a unit of the Department of the Interior by Executive Order No. 7057 of May 28, 1935. The duties of the Administration were outlined as follows: "To initiate, formulate, administer, and supervise a program of approved projects for providing relief and work relief and for increasing employment within Puerto Rico." The Director of the Division of Territories and Island Possessions of the Interior Department was made Administrator of the new administration.

Resettlement Administration. By Executive Order No. 7027 of April 30,

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1935, the Resettlement Administration was created by the President for the purpose of administering in part the work authorized by the Emergency Relief Appropriation Act of 1935, approved April 8, 1935 (Public Resolution No. 11, 74 Congress). Its duties are as follows: (a) to administer approved projects involving resettlement of destitute or low-income families from rural and urban areas, including the establishment, maintenance, and operation, in such connection, of communities in rural and suburban areas; (b) to initiate and administer a program of approved projects with respect to soil erosion, stream pollution, sea-coast erosion, reforestation, forestation, and flood control; and (c) to make loans as authorized under the said Emergency Relief Appropriation Act of 1935 to finance, in whole or in part, the purchase of farm lands and necessary equipment by farmers, farm tenants, croppers, or farm laborers. The Under-Secretary of Agriculture was designated as administrator of the Resettlement Administration.

By Executive Order No. 7028 of April 30, 1935, all the work heretofore undertaken by the Federal Emergency Relief Administration with regard to land settlement and land purchases was transferred to the Resettlement Administration.

By Executive Order No. 7041 of May 15, 1935, the President transferred to the Resettlement Administration all the powers and duties in regard to subsistence homesteads conferred by Executive Order No. 6209 of July 21, 1933, on the Secretary of the Interior, who established the Subsistence Homesteads Division in the Department of the Interior.

Rural Electrification Administration. The Emergency Relief Appropriation Act of 1935 (Public Resolution No. 11, 74 Congress) approved April 8, 1935, makes available not exceeding $100,000,000 for rural electrification. In order to supervise expenditure of this sum, the President, by Executive Order No. 7037 of May 11, 1935, created the Rural Electrification Administration to "initiate, formulate, administer, and supervise a program of approved projects with respect to the generation, transmission, and distribution of electric energy in rural areas."

National Resources Committee. By Executive Order No. 7065 of June 7, 1935, effective June 15, 1935, the President created the National Resources Committee in place of the National Resources Board established by Executive Order No. 6777 of June 30, 1934. The membership of the National Resources Committee and the committee advisory thereto is the same as that of the former National Resources Board and its advisory committee. The duties of the Committee are specified as follows: (a) to collect, prepare, and make available to the President, with recommendations, such plans, data, and information as may be helpful to a planned development and use of land, water, and other natural resources, and such related subjects as may be referred to it by the President; (b) to

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consult and coöperate with agencies of the federal government, with the states and municipalities or agencies thereof, and with any public or private planning or research agencies or institutions, in carrying out any of its duties and functions; and (c) to receive and record all proposed federal projects involving the acquisition of land (including transfer of land jurisdiction) and land research projects, and in an advisory capacity to provide the agencies concerned with such information or data as may be pertinent to the projects. All executive agencies shall notify the National Resources Committee of such projects as they develop, before major field activities are undertaken.

Soil Conservation Service. By Public Act No. 46, 74 Congress, approved April 27, 1935, the Secretary of Agriculture was directed to establish the Soil Conservation Service with the following purposes: (1) to conduct surveys, investigations, and research relating to the character of soil erosion and the preventive measures needed, to publish the results of any such surveys, investigations, or research, to disseminate information concerning such methods, and to conduct demonstrational projects in areas subject to erosion by wind or water; (2) to carry out preventive measures, including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, and changes in use of land; (3) to coöperate or enter into agreements with, or to furnish financial or other aid to, any agency, governmental or otherwise, or any person, subject to such conditions as he may deem necessary, for the purposes of this act; and (4) to acquire lands, or rights or interests therein, by purchase, gift, condemnation, or otherwise, whenever necessary for the purposes of this Act.

On August 25, 1933, an allotment was made to the Department of the Interior for soil erosion work, and shortly thereafter the Soil Erosion Service was established as a bureau of that department. On March 25, 1935, this service was transferred from the Department of the Interior to the Department of Agriculture. It was absorbed and made part of the Soil Conservation Service when that unit was established by the act of April 27, 1935.

Washington-Lincoln Memorial Gettysburg Boulevard Commission. Public Resolution No. 19, 74 Congress, approved May 20, 1935, created the Washington-Lincoln Memorial Boulevard Commission to prepare plans for construction of a boulevard connecting the Lincoln Memorial and the Washington Monument with the Gettysburg battlefield.

Agencies Specifically Continued

The organizations listed below would have expired by statutory limitation on June 16, 1935, unless they had been continued.

Commodity Credit Corporation. Continued until April 1, 1937, by Public Act No. 1, 74 Congress, approved January 31, 1935.

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Export-Import Bank of Washington. Continued until June 16, 1937, by Public Act No. 1, 74 Congress, approved January 31, 1935.

Federal Emergency Administration of Public Works. Continued until June 30, 1937, by Public Resolution No. 11 approved April 8, 1935; duties defined by the President by Executive Order No. 7064 of June 7, 1935.

Federal Emergency Conservation Work (Civilian Conservation Corps). Continued until March 31, 1937, by Public Resolution No. 11, 74 Congress, approved April 8, 1935.

Federal Emergency Relief Administration. Continued until June 30, 1936, by Public Resolution No. 11, 74 Congress, approved April 8, 1935.

National Emergency Council. Continued in its previous form and duties by Executive Order No. 7073 of June 13, 1935.

National Labor Relations Board. Continued until July 1, 1935, by Executive Order No. 7074 of June 15, 1935; continued until August 1, 1935, by Executive Order No. 7090 of June 29, 1935. New permanent board of same name created by Public Act No. 198, 74 Congress, approved July 5, 1935.

National Steel Labor Relations Board. Continued until July 1, 1935, by Executive Order No. 7085 of June 24, 1935; continued "until further order" by Executive Order No. 7091 of June 29, 1935. Duties will probably be taken over by new National Labor Relations Board established by Public Act No. 198, 74 Congress, approved July 5, 1935.

National Recovery Administration. Continued with limited powers until April 1, 1936, by Public Resolution No. 26 approved June 14, 1935. Executive Order No. 7075 of June 15, 1935, abolishes the National Industrial Recovery Board, which has been the administrative head of the National Recovery Administration, and creates the office of Administrator of the National Recovery Administration to direct the organization. The same order creates as parts of the National Recovery Administration the Division of Review to analyze the data collected and the Division of Business Coöperation to aid in the voluntary maintenance of standards of fair competition. The same order also creates the Advisory Council in aid of the National Recovery Administration, the six members being designated in the order.

Office of Federal Coördinator of Transportation. Continued until June 17, 1936, by Public Resolution No. 27, 74 Congress, approved June 14, 1935.

Second Export-Import Bank of Washington. Continued until June 16, 1937, by Public Act No. 1, 74 Congress, approved January 31, 1935.

Reconstruction Finance Corporation. Continued until February 1, 1937, by Public Act No. 1, 74 Congress, approved January 31, 1935.

Textile Labor Relations Board. Continued until July 1, 1935, by Executive Order No. 7084 of June 24, 1935; continued "until further order"

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by Executive Order No. 7089 of June 29, 1935. Duties will probably be taken over by new National Labor Relations Board established by Public Act No. 198, 74 Congress, approved July 5, 1935.

Agencies Continued by General Order

The agencies listed below were continued until April 1, 1936, by Executive Order No. 7076 of June 15, 1935, which applies in general terms to agencies created under authority of Title I of the National Industrial Recovery Act. There is some doubt regarding the status and extent of authority of some of these units.

Central Statistical Board. Legislation is pending (June, 1935) to give this agency permanent status.

Electric Home and Farm Authority.

Federal Alcohol Control Administration. As most of the authority of this agency was derived from the codes, its present powers are evidently limited to investigations. It is likely that its status will be defined by legislation.

Wool Textile Work Assignment Board.

Agencies Discontinued

Puerto Rican Hurricane Relief Commission. Discontinued by Public Resolution No. 22, 74 Congress, approved June 3, 1935; powers transferred to the Secretary of the Interior.

Railroad Retirement Board. Discontinued following the decision of May 6, 1935, of the Supreme Court declaring unconstitutional the act creating the board.

The statutory authority for the agencies listed below expired June 15, 1935, and they were discontinued on that date. It is stated that their work has been completed.

Advisory Committee on Economic Security.

Committee on Economic Security.

Officer of Special Adviser to the President on Foreign Trade.

L. F. SCHMECKEBIER.

Brookings Institution.

Achievements of the Kansas Legislative Council. The Kansas experiment with a legislative council has probably made as much progress as could be expected under the circumstances, with the first year disrupted by special sessions and impeachment trials, and with no research staff until the last five months. While in certain aspects of the Council's work little progress was made, in others the accomplishments were definitely of value and promise.

Council Bills Passed. The natural tendency is to evaluate the work of

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the Council by the extent to which its recommendations were enacted into law. In the special session of 1933, of the Council bills, 60 per cent became law, as compared with 27 per cent of the total number of bills introduced. The Council recommendations were obviously effective.

In the regular session of 1935, of the Council bills, 26.3 per cent became law, in contrast with 26.7 per cent of Senate bills and 30.5 per cent of House bills, although 53 per cent of the Council bills passed at least one house. On this basis, the work of the Council was not negligible, but the results in this respect scarcely warrant a glowing report of the Council's success.

It should be borne in mind, however, that the regular session, informed that a special session would be necessary to consider the federal program, postponed action on all measures requiring additional appropriations until the general financial problem could be faced in the special session. This gave a distinctly negative, rather than a constructive, tone to the regular session. As the major items in the Council's program were essentially constructive, and involved appropriations or new tax sources, the full result of the Council's work will not be apparent until the end of the special session. Old age pensions, the sales tax, state police, and the school problem will await final consideration at that time.

Real Evaluation of Council Work. However, the effect of the Council on the regular session of 1935 cannot be measured primarily by the success of the Council bills. A very large part of the work of the Council was not presented in the form of bills, but in the form of comprehensive background material, designed to aid in the intelligent differentiation between well conceived and poorly conceived proposals. This selection of the important topics and the preparation and preliminary analysis of the factual material constituted the major part of the Council's program.

In this, the Council, with its research staff, made very distinct progress, in the opinion of observers. Comprehensive material was prepared for the legislature on forty-two items.[1] The general impression, which made its way into the press comments, was that far more information on its major problems was available to the 1935 session when it convened than had been available to any previous Kansas legislature.

Of the major problems, the Council contributed advance information on all but three. The questions of capital punishment, of legalizing 3.2 beer, and of the extension of the mortgage moratorium had not been discussed by the Council. However, material on the taxation of beer had been prepared by the Council, and the research department during the session prepared material on the other two items.

[1] Three of the major reports, *The Sales Tax*, *State Police*, and *Old Age Pensions*, developed extensive nation-wide demand. All have been noticed in this REVIEW. In fact, much of the material compiled by the Kansas Council was made available for the use of legislatures and administrative officials in many other states.

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Comparison with Interim Committees. The Council was distinctly more successful than interim committees have been in securing immediate consideration and utilization of its work in the legislative session to which it reported. Interim committee reports have rarely received immediate consideration, and in fact have frequently not been utilized at all until the second or third session following the report.

A majority of the Council proposals were given favorable consideration by at least one house. The Council reports played an important part in legislative deliberations. In the case of the standardized accounting, state police, and school equalization bills, they served as the principal basis of discussion in commitee and on the floor.

It is probably not too much to say that the Council, working about eight months on the school bill and four months on the state police bill, advanced the consideration of these bills by at least two years of normal legislative time.

Change in Legislative Attitude. An intangible, yet highly significant, contribution to the fundamental experiment may well be a change in attitude toward the legislative process resulting from the existence of the Council as a continuous body, with its consideration of proposals and its reports thereon available well in advance of the session. Such a change was definitely perceptible in the November Council meeting and in the reaction of many members of the legislature to the Council reports, although the trend was so slight that the members themselves were scarcely aware of it.

The trend was manifest, in part, by the general acceptance of the Council reports and by the great reliance placed upon them; by an increased unwillingness to decide policy until facts had been secured; by increased discrimination between facts and policy in discussion; and by increased demand for background material, combined with the realization that adequate compilation and analysis required more time than is available during a regular session.

In part, it involved recognition that the legislature's responsibility in the process of legislation begins before the actual consideration of specific propositions in the session itself. In part, it was noticeable in the actual advance consideration given some of the Council reports both by interested groups, by the public, and by members of the legislature. In several instances, this consideration in anticipation of the regular session far exceeded expectations.

As this weaving into the legislative process of continuous preparation by the legislature itself is fundamental to the experiment, the fact that a trend, though slight, was perceptible is significant as indicating sound beginnings in the right direction. As the Council had but five months

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with a research staff in which to make this contribution, the fact that any change in attitude was evident is particularly significant.

Research Department. The research staff played an important part in the work of the Council, possibly a major part in the obvious accomplishments of the body. The Council had only two sessions after the research department was established, the August meeting coming close upon the organization of this staff. Consequently, the results of the combination of Council and well-staffed research department are being judged at this time primarily upon the effectiveness of the single Council meeting in November.

The research staff had prepared twenty-one items for the Council by the end of the November meeting, and a total of forty-two items under Council instruction and supervision by the time the legislature convened. In addition, fifty-two inquiries from members of the House and Senate were handled by the department during the session. Some of these requests, from committees, involved several hundred hours of research each, the staff being kept at peak load until the last week of the session.

Members were somewhat inclined to differentiate between the Council and its research staff, crediting the latter with accomplishments apart from the former, unaware that all of the pre-session research had been undertaken solely under the direction of the Council and that much of the benefit therefrom had come from the assimilation of the material and re-direction of research by Council committees and members in advance of the session.

Legislative Attitude Toward the Council. Although bills were introduced to repeal the law creating the Council, only one reached the floor, and that was defeated by vote of 14–20 in the Senate; and a last minute attempt in the House to eliminate the appropriation met with no great response.

The Council received no increased appropriation. The temper of the session was against all increases, and the accomplishments of the Council were not positive enough to overcome this general feeling. However, definite financial assistance was received from the House by the assignment to the research department of two full-time clerks and three part-time stenographers.

The general sentiment seems to have been that the Council, through its research staff, had made substantial contribution, that there had not been opportunity for comprehensive testing of the general value of the Council idea, and that the experiment ought to be continued.

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MUNICIPAL NOTES

EDITED BY WILLIAM ANDERSON
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Cities and the National Government Under the New Deal. The cities of the United States have drawn closer to the national government in the past two or three years because the latter has been hospitable and has deigned to show an interest in their economic troubles and those of their citizens. The resulting city-federal contacts cannot be properly described or appraised without first outlining at least the major new departures which the federal government has made or plans to make in its basic attack on the economic difficulties facing the country. These may be classified roughly as follows: (1) A direct attempt to regulate and control the business structure of the country, involving production and distribution, agriculture and industry, labor and finance. This control of business, exercised mainly through the NRA and the AAA, provides for limitation of hours of labor, for minimum wages, for price-fixing, and for control of production. The obvious objective is to encourage the employment of more labor and to raise prices. (2) A federal program of public works, interpreted broadly so as to include not only public works in the narrow sense of streets and sewers, but federal, state, and local public improvements of almost all types. (3) A federal subsidy for, and in some cases actual federal administration of, the function of relief for distressed citizens. (4) A security program, looking mainly to the future, and using the insurance principle under public auspices to provide minimum security against unemployment, old age, and other hazards of modern industrial life.

This federal program has affected the functions of cities in many ways. Indirectly, of course, the cities have a great stake in any program which will secure economic recovery for their citizens in their private capacities. The providing of minimum governmental protection and the continuation of the many varieties of coöperative service which the citizens demand of their city governments depend vitally on the income and ability of the citizens to provide the prices or taxes therefor. In a very direct way, also, the federal policies are of aid to cities. For example, the easing of the bank situation and the Home Owners' Loan Corporation program have done much to encourage the payment of taxes.

As far as the code system for controlling business is concerned, it is probably true that the cities have been affected adversely, at least directly as a class of consumers. It has been variously estimated that city purchases during the past year have cost anywhere from a hundred to a hundred fifty million dollars more because of the NRA. This is due partly to the general price increases under the code system and in part to the

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attempted restriction of the competitive principle in public buying. The law and good practice in public buying require that substantial purchases shall be based upon the adoption of specifications, securing of competitive bids, and the selection of the lowest and best bidders. This practice not only is traditional, but is justified on the ground of cost and on the ground of elimination of political favoritism. It must be said, therefore, that the NRA system has seriously endangered the progress which public purchasing has made, and has increased the regular cost of government.

In the federal public works program, the cities have had a part. This is not as large as was originally anticipated, because of the allocation of substantial amounts of the $3,300,000,000 appropriation to other purposes and to federal projects of various kinds. Nevertheless, cities all over the country have participated in loans and grants for a great variety of projects, including mainly water-works, sewerage, street improvements, and buildings. The essential features of the public works relations between the cities and federal government were: (1) a grant for 30 per cent of the cost, which approximately offset the increased cost due to a city's complying with the various wage, hour, and other prescribed conditions of work; and (2) a loan from the federal treasury of the balance, or 70 per cent of the cost of the project, in case the city was not able to finance it out of its own treasury or from its regular sources of credit. With respect to the latter, the government acted strictly as a banker and required that the loans made and bonds issued by the cities conform in the strictest sense to the requirements of the laws governing city debts, taxes, etc. It is the general consensus that as far as the legality of loans was concerned, the government was stricter than the usual bond attorney looking out for the interests of a private bond buyer. These city loans and grants were administered by the federal PWA under a system of centralized administration which emphasized the strict legality of the loan, the soundness of the work to be done, and reliance upon the orthodox methods of performing public work, i.e., carefully prepared plans and specifications, bids and contracts, and strict inspections.

In addition to their own loans and grants, however, cities have been affected indirectly by some of the federal projects financed from the public works funds. The most important of these are the large hydroelectric power projects throughout the country which provide sources of cheap power. Some of the city loan and grant projects approved provided for municipal power plants and distribution systems, a few being for competitive plants, and others for extensions of existing plants.

Another type of federal project indirectly affecting cities is in the field of housing. In a few cases, federal public works money has been made available to state or municipal housing authorities, but usually the government has had to set up its own corporate organization for housing

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purposes, and to proceed to construct housing projects in its own name. The follow-up policy on these federal housing projects has not yet been fully determined. This involves the question of who shall operate and maintain the projects, and what tax and other subsidies shall be provided; for it is generally agreed that the desirable minimum of housing facilities which these projects contemplate cannot be furnished to the low-income classes for which they are built without substantial subsidies in one form or another.

Another portion of the federal public works program affecting cities indirectly has to do with federal aid for highways. This is a fairly old policy, but new features are the liberality of the appropriations (these were accompanied by the imposition of the federal gasoline tax) and the requirement that at least 25 per cent of the federal aid money in each state be expended within the limits of the cities.

The federal policy on relief has gone through many stages, and the city's relationship to the federal government in connection with this activity has necessarily taken many forms. The federal government originally took the position that relief was the concern of local government and private charity; finally, however, it made some relief loans to the states which were to be repaid later. After the change of administration, it took the next step and provided for outright subsidies to the states for relief purposes, through the medium of the FERA. The next stage was the CWA work program to supplement the direct relief of the FERA. This program employed approximately 2,000,000 people from the relief rolls and approximately 2,000,000 more from the other unemployed, paying prevailing wages or better. Although it was administered by direct federal agencies in each state, it was decentralized to the state level. Through it, a large amount of relief was given in a critical winter, and many worth-while projects were performed, although emphasis was naturally upon projects which involved a large amount of labor and which would be done quickly, without resort to contracting. While in some cases the government furnished funds for the purchase of material, the general practice was to ask the local governments to provide the materials, as well as the supervision, equipment rental, and other incidental expense.

The next stage of the federal relief development was the elimination of the CWA and the setting up of a work division in the FERA. The government made lump-sum grants to the states, which were to be administered along with state and local funds through approved state relief administrations (the national government providing the excess of relief funds needed over and above the amounts which the states were judged to be able to provide themselves). This program, which is just now coming to an end, covered both direct relief and work relief. Its essential features were the emphasis upon relief rather than employment, the limitation of

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the amount that may be earned by any individual on work-relief projects according to a determined "budget deficiency," and the use of prevailing wage rates as locally determined. An important aspect of this program was the frequent collision between the federal and state governments, involving two matters: (1) the meeting by the states of certain minimum standards of relief administration, and (2) the contribution by the states of their fair share of the burden, as prescribed by federal administrative authorities. It is easy to see that in such situations charges of inefficiency, graft, corruption, and the playing of politics were almost certain to arise. This relief-grant system, whether based on the theory that the extra or emergency relief necessary is a federal responsibility, or on the theory that the federal revenue system is better adapted to the financing of the relief burden, cannot fairly be criticized because the allocations to the states did not correspond geographically to the federal tax collections. For all other federal functions, expenditures are presumably based on some objective test of "need"; and the incidence of federal taxes is so wide that the place where the taxes are immediately collected into the treasury has no material significance. Nevertheless, the lack of publicity for the federal formula, if there was one, for calculating the states' ability to share the relief burden encouraged critics in the suspicion that allocations might have had political aspects and might have involved the bluffing strategy of a poker game.

The next phase of the federal relief program, now being worked out in Washington, is presumably to be a "relief-work" program. While the Administration program as presented to Congress did not give enough detail so that all of the essential principles of the program could be determined at that time, one or two elements of the program are clear, assuming that it will follow the thoughts expressed in the President's message of January 4. In this message, the President said: ". . . This decision brings me to the problem of what the government should do with approximately 5,000,000 unemployed now on the relief rolls. About one million and a half of these belong to the group which in the past was dependent upon local welfare efforts. Most of them are unable for one reason or another to maintain themselves independently—for the most part, through no fault of their own. Such people, in the days before the great depression, were cared for by local efforts—by states, by counties, by towns, by cities, by churches, by private welfare agencies. It is my thought that in the future they must be cared for as they were before. I stand ready, through my own personal efforts and through the public influence of the office that I hold, to help these local agencies to get the means necessary to assume this burden. There are, however, an additional three and one-half million employable people who are on relief. With them, the problem is different and the responsibility is different. This group was the victim

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of a nation-wide depression caused by conditions which were not local but national. The federal government is the only governmental agency with sufficient power and credit to meet this situation. We have assumed this task, and we shall not shrink from it in the future. It is a duty dictated by every intelligent consideration of national policy to ask you to make it possible for the United States to give employment to all of these three and one-half million employable people now on relief, pending their absorption in a rising tide of private employment."

Although many have doubted the practicability of such a segregation between "employables" and "unemployables," the President here makes the distinction and accepts as a federal responsibility the giving of work to the "employables" on relief. Whether this new federal works program will be able to provide work for all the classes and crafts of the "employables," and what its relation will be to the millions of unemployed "employables" who are not yet on relief, remains to be seen. The administrative arrangements, the requirements as to state and local coöperation, the extent, if any, to which contracting will be used, and the types of projects to be favored, all await the order of the President (May, 1935).

The Administration's program for social security is not yet adopted, but if it does become the law of the land there will be aspects of it which relate definitely to city governments. While the major parts of the program look to the future, a portion of it will undoubtedly have to do with special classes of needy people that are now superannuated. These are really a part of the "unemployables" for which the state and local governments are to be responsible. In this connection, the President made this further statement in his message: "The security legislation which I shall propose to the Congress will, I am confident, be of assistance to local efforts in the care of this type of cases." The federal insurance program will undoubtedly use, to a large extent, state insurance funds and administrative machinery. But even so, the cities will have a stake and an interest in the program and its effects upon their activities and employees (employment offices, pension funds, etc).

Other important New Deal legislation directly affecting cities includes: (1) the Johnson Act, restricting the use of the federal courts to delay utility rate regulation litigation started under state procedure; (2) the Municipal Debt Adjustment Act, under which minority creditors are prevented from "sabotaging" reasonable adjustments which may be agreed on by the cities and three-fourths of their creditors. (3) amendments providing for the extension of federal jurisdiction in police matters. This is supplemented by educational and voluntary facilities for training, communication, and identification which have been made available to state and local officials in the police field.

It is apparent that many of the city-federal relationships described are

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new. From the point of view of the political scientist, what developments deserve emphasis?

In the first place, the federal emergency program, as related to states and cities, has given a tremendous encouragement to planning, not only the planning of natural resources and public works, but fiscal and governmental planning as well. Federal leadership and funds have been used to make both national and local surveys; these will provide many of the facts needed for voluntary coöperative programs of action by the various states and cities as well as the federal government itself. Much encouragement has been given to the attitude—"what are the facts, and what are others doing?" However, so far as current budgeting is concerned, the new city-federal relations have interfered considerably with the immediate practice of proper financial planning, mainly because of the day-to-day character of, and frequent changes in, the federal subsidy program.

In the second place, the last three years have seen significant developments in the matter of *competence of administration.* The federal administration itself should be commended for considerable reliance upon trained personnel in its attacks upon technical and complicated problems. While it is to be regretted that the recruiting of personnel for the many federal emergency agencies was not undertaken through the established recruiting machinery of the federal government, there has been, nevertheless, a substantial use of the merit system in spirit in some of the emergency offices, for example, the PWA, FERA, TVA, and FCA. When the federal authorities went out into the states either to set up their own agencies for works and relief or to prescribe minimum standards for grants-in-aid, it must be admitted that on the whole this federal contact gave encouragement to the merit system and discouraged spoils politics. In the federal field itself, the depression has seen a tremendous increase in "administrative discretion" and a consequent reduction in the scope of legislative policy-determination. Such a shift has not taken place to the same extent in state and local government, and the traditional executive and legislative relationships, at least those centering around the budget, still obtain.

In the third place, there is evidence that there have been real changes in the relationships between the federal, state, and local levels. Many of the changes have taken place through the stretching of laws and in spite of the restrictions of constitutional provisions which apparently did not contemplate a strong federal-state exercising a large federal police power and a substantial control over our economic system.

No one can study the relationships between the cities and state and federal governments during the last few years without coming to the conclusion that municipal home-rule has been very greatly modified, and often without very much complaint on the part of the cities. The loan

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and grant agreements between the cities and the federal public works administration were in part merely banking contracts between the cities as debtors and the federal government as creditor; but they also involved the expression of governmental leadership on the part of the federal government in so far as the conditions of work were concerned. It is true that they were all assumed voluntarily by the cities; but in effect the federal government imposed conditions on the cities, which willingly accepted them, and in addition it retained the right to approve in detail all plans and specifications for the projects undertaken, and insisted upon rigid inspection of the work and auditing of the accounts and financial transactions. The government insisted through these contracts not only that the projects should be sound from an engineering point of view, but that the contract prices paid should be reasonable and that the cities should get their money's worth. While this method was not legally the exercise of governmental supervision over the cities, it did provide a way of securing results on a uniform national basis, and incidentally it short-circuited the state governments. Moreover, it emphasized a principle which we shall hear much about in the future in the relations between the various levels of government, namely, the principle of minimum standards of service.

The states were not entirely out of the picture, however, for the cities were not enabled by the federal contracts to do anything which they did not previously have the authority to do. No tax or debt limits were changed. The authority of the state governments over their municipal subdivisions was not modified in the slightest. Of course it is true that many states were induced to change their laws respecting city authority and financial procedure, so that the cities might coöperate in the federal program. This was due partly to the political leadership of the federal government and partly to the appeals of the cities and the recognition of the exigencies by the state legislatures. Examples of some of the pertinent statutory changes are those providing for state and municipal housing and improvement authorities, those authorizing revenue bonds, those authorizing sewer rentals, and those permitting liberal procedures for debt adjustments and refunding of bond issues.

Another aspect of the developments of the last few years is the breakdown of partitions between the various levels of government. This has resulted from the realization that the major problems of government are economic, and that the existing governmental organization for carrying on and financing the various public services in different areas is not adapted to modern conditions. It is realized that even states are not always large enough to encompass enough authority over sufficient wealth and income to finance the services that should be given to their citizens, and that consequently the federal government with its broader juris-

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diction and revenue structure needs to assist. And the "function" is predominant over the "area" or "level" of government. For example, the important thing is *public* health, not *city* health, or *state* health, or *federal* health. Of course there are local aspects and larger aspects, neither of which should be forgotten. And the very important problem of appropriate service areas and units of government should not be neglected.

There is no question whatever that it was the federal government during the last few years that exercised the leadership in the life-saving action that was necessary to combat the depression. This was natural because the federal government alone conforms to the economic unity of the country. This leadership has been exercised in spite of the very limited and restricted position which the federal government occupies in our constitutional framework. Things have been done out of sheer necessity, and many constitutional powers have been stretched. An interesting example of extra-legal development, justified by necessity, is the situation in Key West, Florida, where municipal and state government broke down and federal relief authorities took over the city, almost in the rôle of "receivers." Under the new emergency organization, the services are being carried on by a staff who are, in effect, combined federal, state, and local officers.

There has been some criticism because federal funds were not granted to state and local governments to use in their discretion and according to their own administrative procedure and machinery. While there is an element of justification in this criticism, particularly with respect to those units which have through the course of years developed a competent administrative personnel and procedure, the emergency nature of the program probably did not permit the development of much "coöperative technique" at the moment.

What lessons do the contacts of these last few emergency years have for us, in the matter of city, state, and federal relationships? First, of course, is the great need for continued development of competent personnel and technical proficiency in the administration of local government. This is the crux of the problem. Home rule will never amount to much for local communities, or even for states, unless there is developed a dependable, professionally competent, state and local administration. Second, there is a need for the further development of administrative competence in the federal government, depending on a career service and the outlawing of spoils politics. Third, there must come to all levels of government a realization that we are all members of one family and that the public welfare in the national sense will probably not permit very much local government liberty of action in so far as the same may be contrary to minimum standards of service, administrative competence, and fiscal soundness which are generally recognized as necessary. Fourth,

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there needs to be developed a new "coöperative technique" between federal, state, and local authorities. A sound relationship will properly protect the national viewpoint and at the same time defer to defensible "home rule;" and it will make larger use of state and local administrators. Perhaps, with the growth of administrative competence, we may look forward to the day when local officials will be regularly deputized as state and federal agents, following the example of the county agent and the public employment office.

C. C. LUDWIG.

International City Managers' Association.

Training Municipal Officials. The year is 1920. The place, a city in up-state New York. A young and intelligent machinist comes home in high excitement to tell his family that he has been selected by the city authorities as a member of the local police force. The next morning, he reports to the designated precinct station house. There he is fitted for a uniform, given a shield, a night stick, and a revolver, and then sent on a tour of duty in the company of a veteran patrolman. His guide gives him some kindly admonitions and some more or less pertinent information about his new job, including the location of a good all-night restaurant. The next day the young recruit, after this very perfunctory instruction, is turned loose as a policeman. The term "turned loose" is used advisedly. This new policeman is untrained, and he is, in a sense, a potential menace, because he has the power to destroy reputations by false arrest and he is armed to enforce any unfortunate decision which he might make. His knowledge of his difficult and dangerous job is hereafter to be acquired only by the slow and costly process of experience. This is manifestly unfair to his employer, the taxpayer, to the young recruit himself, and to his family.

This incident illustrates the general municipal employment policy which was in vogue throughout the country only a few years ago for practically all classes of municipal officials except those prequalified by law. For many years, municipal officials of New York State had been thinking about this problem—which was, essentially, to find an effective substitute for experience during the apprenticeship period. Finally, from England came the solution, namely, the municipal training school.

The experiment started in New York State with the establishment of schools for policemen and firemen in 1928. After demonstrating for several years the practicability and value of the plan, the municipalities of the state, acting through the Conference of Mayors, an official association of the cities and villages, adopted in 1931 a complete training program for all groups of municipal employees in the state. This program is now in successful operation, and since 1928 the Conference has operated

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approximately 250 such training schools, with a total attendance of over 32,000 city and village officials. The costly school of experience has been supplanted in New York State by the inexpensive municipal training school.

The significance and standing of these schools is evidenced by the fact that on January 1, 1935, the board of regents of the University of the State of New York incorporated a small group of municipal officials as the Municipal Training Institute of New York State, empowering them to operate these schools. The new Institute is the first educational organization of its kind in America, and will operate, on a regular schedule, training schools for twenty groups of municipal officials. Special certificates of qualification, issued under authority from the board of regents of the University of the State of New York, will be granted to officials completing a course satisfactorily. Courses are being given for policemen, firemen, financial officials, purchasing officials, assessors, public works officials, clerks, public welfare officials, park officials, building inspectors, civil service commissioners, sewage plant operators and sewer superintendents, milk and dairy inspectors, recreation officials, fire chiefs, police chiefs, water superintendents, and food inspectors.

The police and fire schools will continue to be operated on a zone basis. There are some twenty-three centers of police instruction in the state, and nineteen points at which fire instruction is given. Instructors in both police and fire schools are brought to a central point to receive instruction from experts, and they then return to their own municipalities to teach their fellow officers and employees of neighboring municipalities assigned to that zone. In both the police and fire services, a standard curriculum has been adopted and is taught uniformly throughout the state. The zone police and fire schools are operated ordinarily from ten to twelve weeks a year, depending on the working schedules of the local departments. The average annual attendance at zone police schools is about two thousand, and at zone fire schools about five thousand. Schools for other groups of officials will be operated at a central point on a three-to-five day schedule with a very complete curriculum. Attendance at these short courses ranges from fifty to three times that number.

The first step in operating a municipal training school is the preparation of a comprehensive curriculum. The schools teach only fundamentals covering the essential duties of the officials. Theories and policies are not presented. Municipal officials and experts are consulted in the formulation of every curriculum.

After the curriculum is drafted, it is necessary to procure competent teachers. New York is particularly fortunate in having a very able staff of state officials who assist materially with the lectures in the school. Municipal officials and experts also are asked to serve. Lecturers in the

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schools are brought together in advance of the sessions for a discussion of school procedure. In addition, the lecturers receive suggestions for effective teaching from teaching experts. Lecturing staffs for the schools have uniformly been very capable.

At the beginning of each session of a school, the roll is called, and a careful record of attendance is kept. If any official is absent more than two sessions without a legitimate excuse, he is not awarded a certificate of qualification. Lecturers are not permitted to read papers. Each lecturer speaks informally, utilizing the blackboard as much as possible. Lecturers also use charts or other graphic means of presentation and very often distribute literature or other outlines to be followed by the class. Very frequently, lecturers will obtain class participation by asking questions. At the conclusion of each lecture, students are asked questions on the material just discussed, which serves to stimulate interest and attention. Students, furthermore, are required to keep note-books and to participate actively in the school.

Wherever possible, members of the class are given an opportunity to participate in a practical way in some phase of demonstration or inspection work which they normally may encounter in their every-day duties. For example, in a school for milk inspectors, the entire class of ninety men was taken to a dairy barn and each member of the group was asked to rate the dairy on scoring sheets which were provided for that purpose. In an evening session, the results of the scoring were analyzed and mistakes corrected. A similar plan was followed in the school for food inspectors.

At the final session in each school, a general question period is provided for the clearing up of doubtful points. At the end of each school, graduation exercises are held and certificates of qualification are presented. In many cases, supplementary information on various subjects discussed at the school is sent to students after they have returned to their homes.

Citizens would be impressed by the excellence of instruction and the interest and keenness on the part of students in these schools. They would be amazed also by the technical nature and complexity of the subjects discussed. An unusually successful training school was held recently for building inspectors. One inspector in attendance had served his municipality twenty years; the man who sat on his right had been in municipal service for six months. Several of the officials enrolled in the class were graduate engineers. Others had received only a grammar-school education. All of them, however, entered into the spirit of the school with enthusiasm.

It is, of course, difficult to measure the full benefits of these training schools. Hundreds of letters have been received from officials who have attended the schools, stating that they have been of real advantage.

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Practically all of the mayors in the state believe firmly in the value of the schools. Their standing has been recognized by a number of civil service commissions in the state, which now give credit in promotional examinations for attendance at the schools.

There are many instances in which beneficial results can be measured definitely. In two cities, police officers rescued children from drowning by the application of methods of resuscitation learned in police training schools. The chiefs of these cities stated that if the officers had not received such training, they would not have been able to save those lives. Crime statistics show that the work of local police departments has improved greatly in recent years. Police training has played a large part in that improvement. The New York State department of health, which coöperates in the operation of schools for water officials, sewage works operators, and milk inspectors, states that there has been a noticeable improvement in the work of many of these groups of local officials following their attendance at the training schools. The bureau of local assessments of the state tax department points out that as a result of the assessors' school held last year, assessors in many localities have been stimulated to install tax maps which authorities believe to be indispensable tools for an assessor. Scores of such random illustrations of the benefits of municipal training could be given.

It is interesting to observe that the importance of training municipal officials is gaining world-wide recognition. At a recent International Congress of Local Authorities held in London, one of the two topics discussed was public personnel training. Perhaps the most outstanding example of public personnel training in the world is that conducted by the National Association of Local Government Officials in England, familiarly known as "Nalgo." For nearly a quarter of a century, Nalgo has been training England's municipal officials. Nalgo is an organization of sixty-six thousand public officials. A recruit cannot hope to receive a place with a municipality unless he has satisfactorily passed Nalgo's course. At the University of Cambridge, a week's course is conducted annually by Nalgo, which the municipal officials attend during their vacations. In addition, Nalgo conducts a dozen specialized correspondence courses for city employees.

Since 1928, there have been about three hundred fifty training schools for municipal officials in this country, conducted by state leagues of municipalities, with a total attendance of more than forty thousand municipal officials. Leagues of municipalities in Virginia, Texas, Kansas, Colorado, Minnesota, Oklahoma, Kentucky, Ohio, and Wisconsin have been active in operating such schools. The American Municipal Association, the national federation of state leagues of municipalities, has given a strong impetus to this movement by advising and assisting leagues in establishing such training programs.

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There is abundant evidence that the value of in-service training in government employment is gaining wide recognition. The municipal league training schools, institutes of the type operated for public employees by the University of Southern California and the University of Virginia, departmental training schools carried on in federal, state, and local governments, and the development of extension courses for municipal administrators by the International City Managers Association, attest to the spread of this movement.

It is apparent that the municipal training school movement is firmly established and can look forward to continued growth and refinement. The importance of municipal training schools has been reaffirmed only recently in the report of the distinguished Commission of Inquiry on Public Service Personnel. The Commission, in its report to the country, urged the extension of training in service as essential to any sound system of public personnel administration.

Those engaged in the operation of these schools believe that they have reduced the apprenticeship period of public officials, increased the efficiency of municipal employees, and raised the prestige of municipal government, by convincing citizens that municipal service is a technical and highly specialized work. Furthermore, they afford many striking, and as yet unexplored, possibilities for greater improvement in governmental personnel in the future.

One of the most significant facts about the schools is that they have emanated from municipal officials and are supported by the municipalities. They constitute an effort at self-improvement by municipal officials which should be heartening to every urban taxpayer as an evidence of the desire of their officials to improve their municipal service. There are, indeed, many governmental experts who believe that these schools operated by and for municipal officials are one of the most hopeful signs for lasting improvement in the future municipal government of this country. As one authority has trenchantly remarked of this great adventure in democracy, "These schools have put the breath of life into the dry bones of civil service."

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Municipal Government in National Socialist Germany. Before National Socialism, German municipal government was largely under the jurisdiction of the states (*Länder*). However, national centralizing tendencies were even then powerful, and the legislative and administrative activities of the Reich vitally affected the local authorities at many points.[1]

[1] See R. H. Wells, *German Cities; A Study of Contemporary Municipal Politics and Administration* (Princeton, 1932), Chap. VII.

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Nevertheless, the general structure of municipal government was determined by the states, in consequence of which considerable diversity of types existed. The complete subordination of the *Länder* to the Reich by the National Socialists paved the way for national municipal reform. On January 30, 1935, the Hitler cabinet decreed the German Municipal Government Act (*Deutsche Gemeindeordnung*) which went into force on April 1, 1935.[2] This law standardized municipal government throughout Germany in much the same way that the government of French communes was standardized under the municipal code of 1884. Before discussing the *Gemeindeordnung*, one must speak briefly of the principal steps which led up to it.

The *Gleichschaltung*, or "coördination," of local government was carried through almost immediately after Hitler became chancellor. New local elections were held in Prussia on March 12, 1933, and the local legislative bodies in the other states were dissolved and reconstituted according to the results of the Reichstag election of March 5. The rival political groups were then liquidated and all parties except the National Socialist party were prohibited by law. Local councils thereupon became one-party chambers.

At the same time, municipal administration was purged of Jewish, republican, socialist, and other "unreliable" elements.[3] No statistics are available on the cleansing of the professional civil service. Personal inquiries by the author almost always evoked the reply that not many changes had been made. This is doubtless true for the middle and lower ranks of municipal officials and for the municipal employees and workers. On the other hand, the "casualties" among the burgomasters and higher professional administrators were very numerous. Here, "the new broom swept clean." Of the pre-Hitlerite chief burgomasters in the fifty-one cities having more than 100,000 inhabitants, only four were left in office. There was considerable pressure for the appointment of "deserving party workers" to the higher municipal posts, and this was not always successfully resisted. In general, however, an endeavor was made to fill the vacancies with properly qualified men. In some instances, the new burgomasters and *Beigeordneten* were chosen from among the higher professional officials of the city in question or of other cities; in some, they were drawn from private industry; and in other cases they were individuals who had had long experience in city councils and in other unpaid municipal positions. The professional character of the municipal civil service has been retained, but subject to the requirement that each officer must "at

[2] *RGBl.*, I, p. 49.

[3] *Gesetz zur Wiederherstellung des Berufsbeamtentums*, April 7, 1933, *RGBl.*, I, p. 175. See also F. M. Marx, "German Bureaucracy in Transition," in this REVIEW, Vol. 28, pp. 467–480 (June, 1934).

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all times fully identify himself with the state of the National Revolution."[4]

The coördinating process did not stop with the governments of municipalities, counties, and provinces; it extended also to the associations of local authorities. Before 1933, there were six local government leagues (such as the *Deutscher Städtetag* and the *Deutscher Landkreistag*), which in turn were subdivided into eighty-three state and provincial associations. The leagues of local authorities exerted a powerful influence under the Weimar system, but they did not conform to the pattern of the totalitarian state. Accordingly, in May, 1933, they were "voluntarily" dissolved and reunited into a single organization known as the *Deutscher Gemeindetag*. At the end of 1933, the *Deutscher Gemeindetag* was made a public law corporation and declared to be the exclusive representative of all local authorities, which were compelled to become members of it and to contribute to its financial support.[5] Like all National Socialist creations, the new organization is based upon the leadership principle. The responsible leader of the *Gemeindetag* is the chairman, who supervises the main office in Berlin and the twenty-three state and provincial agencies which were set up. The chairman, executive president, board of directors, and expert committees of the *Gemeindetag* are appointed by and subject to the control of the national minister of the interior. The functions of the *Gemeindetag* are wholly of an advisory and research character, but even so, the services of the organization have already proved of great value to the local, state, and national authorities. The drafting of the *Deutsche Gemeindeordnung* is in no small degree the results of months of careful study by the experts of the *Gemeindetag*.

In addition to numerous statutes passed by the Reich directly or indirectly relating to municipal government, the states also enacted much municipal legislation.[6] Particularly noteworthy were the Prussian *Gemeindeverfassungsgesetz* and *Gemeindefinanzgesetz* of December 15, 1933.[7] These two acts established in Prussia for the first time complete municipal uniformity. The eight *Städteordnungen* and seven *Gemeindeordnungen* previously in force were all repealed. Berlin alone was excepted, but a subsequent law[8] altered the structure of Berlin's government to conform

[4] Marx, *op. cit.*, p. 478.

[5] *Gesetz über den Deutschen Gemeindetag*, Dec. 15, 1933, *RGBl.*, I, p. 1065. See also Karl Fiehler, "Der Deutsche Gemeindetag," *Jahrbuch der Kommunalwissenschaft* (Berlin, 1934), Vol. I, No. 1, pp. 47–57; and F. M. Marx, "The New Roof over German Local Government," *National Municipal Review*, Vol. 23, pp. 255–257, 270 (May, 1934).

[6] See "Die Aenderungen des Kommunalrechts seit dem 30. Januar 1933," *Der Gemeindetag*, Vol. 27, pp. 558–561 (Dec. 20, 1933).

[7] *Preussische Gesetzsammlung*, pp. 427 and 442. See also the articles by Surén and Loschelder in *Reichsverwaltungsblatt und Preussisches Verwaltungsblatt*, Vol. 55, pp. 21–34 (Jan. 13, 1934).

[8] *Gesetz über die Verfassung der Hauptstadt Berlin*, June 29, 1934, *Preussisch*

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to the general principles of the legislation of December 15. It is not necessary to discuss the details of the *Gemeindeverfassungsgesetz* and the *Gemeindefinanzgesetz*, since these two laws have now been superseded by the *Deutsche Gemeindeordnung*, and since the *Deutsche Gemeindeordnung*, while profiting from the mistakes in the Prussian laws, nevertheless draws largely upon those measures.

The scope of the *Deutsche Gemeindeordnung* is substantially the same as the Prussian legislation of December 15.[9] It is, however, considerably shorter, since it contains only 123 sections as compared to the 217 sections in the Prussian statutes. The *Deutsche Gemeindeordnung* is divided into a preamble and eight parts—the foundations of the municipal constitution; name and insignia of municipalities; municipal territory; inhabitants and citizens; government of the municipality; municipal economy; (state) supervision; and concluding provisions. With the exception of Berlin, the act applies to all *Gemeinden*, a term which includes both cities (*Städte*) and rural municipalities (*Landgemeinden*). "Cities" are defined as municipalities which had that title according to previous law (Sec. 9). The act does not apply to the so-called unions of municipalities (*Gemeindeverbände*) such as the rural counties(*Landkreise*) and provinces, but city-counties (*Stadtkreise*) fall within its scope.

Under the *Deutsche Gemeindeordnung*, the three most important officials are the national minister of the interior, the local party agent or commissioner (*Beauftragter*), and the local burgomaster. The national minister of the interior is the head of the hierarchy of state supervisory agencies exercising control over municipalities, and is vested with large discretionary powers (Secs. 107, 117, 119, 121). The local party agent is appointed by the deputy leader of the National Socialist party (Rudolf Hess) to serve as an organic connecting link between the party and each municipal government (Secs. 6, 118). The deputy leader has complete freedom in the selection of the party agent, but he is likely to be the district or county leader (*Gauleiter* or *Kreisleiter*) of the party. The working out of party-municipal relationships was one of the most difficult problems in the framing of the *Deutsche Gemeindeordnung*. Municipal officials, even though National Socialists themselves, sometimes complained of excessive interference by party agencies; on the other hand, the party leaders could not accept the principle of local freedom from party control. Hence, a compromise was evolved whereby the party agent was made the sole

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Gesetzsammlung, p. 319. See also Krauthausen, "Das neue Berliner Gemeindeverfassungsrecht," *Reichsverwaltungsblatt und Preussisches Verwaltungsblatt*, Vol. 55, pp. 626–628 (Aug. 4, 1934).

[9] *RGBl.*, I, p. 49. See also "Die Deutsche Gemeindeordnung," *Der Gemeindetag*, Vol. 29, pp. 61–72 (Feb. 1, 1935).

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official tie between party and municipality, and whereby the powers of the agent, though important, were strictly limited in the law. What these powers are will be discussed later. To give the party agent blanket authority would have seriously interfered with the principle of local leadership represented by the burgomaster.

The actual structure of municipal government is based upon the leadership principle, local legislative and administrative powers being centralized in the hands of the burgomaster (chief burgomaster in city-counties). The burgomaster issues local ordinances after hearing the opinions of the municipal councillors (Sec. 55). He directs the administration and appoints and dismisses all municipal officials, employees, and workers except the chief executive officers (*Beigeordneten*), and even these are subject to his orders (Secs. 32, 37). The method of selecting burgomasters and *Beigeordneten* is somewhat complicated (Sec. 41). Where these offices are full-time professional positions, the first step is the advertisement of the vacancies, candidates being invited to file their applications. This was the traditional procedure followed before 1933, and it has been retained under National Socialism. From the list of applicants, and after consultation with the municipal councillors (and with the burgomaster in the case of *Beigeordneten*), the party agent selects not more than three names. The agent then sends his nominations, along with the names of the other candidates, to the supervisory authorities. The supervisory authorities involved vary with the size of the city and the importance of the office. Thus, in city-counties with more than 100,000 inhabitants, nominations for the office of chief burgomaster, burgomaster, and city treasurer are sent to the national minister of the interior. If the supervisory authority approves one of the nominations made by the party agent, that candidate is appointed by the municipality. If the supervisory authority does not approve one of the nominations, the party agent must file new nominations. If disagreement again results, the supervisory authority designates the person whom the municipality must appoint. Paid, professional burgomasters and *Beigeordneten* are appointed for twelve years; unpaid ones for six years. But appointments may be cancelled during the first year of office by the supervisory authority.

Municipal councils are abolished, but the burgomaster of each *Gemeinde* is advised by a group of unpaid municipal councillors (Secs. 48–57) known as "*Gemeinderäte*" (in cities, "*Ratsherren*"). The maximum number of councillors is limited according to the size of the municipality, the maximum being thirty-six for city-counties. The party agent in agreement with the burgomaster appoints the councillors for terms of six years. In making such appointments, the agent is directed to take account of "national reliability, qualifications, and reputation, and to consider personalities whose activities give to the municipality its special signifi-

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cance or who exert an important influence on municipal life" (Sec. 51). This allows the councillors to be chosen according to the corporative principle; but the principle is not so clearly stated as in Sec. 41 of the Prussian *Gemeindeverfassungsgesetz*. The Prussian *Gemeindeverfassungsgesetz* also made certain party officers ex-officio municipal councillors. The *Deutsche Gemeindeordnung* rejects this device. The party agent is not a municipal councillor and may take part in the councillors' deliberations only in the specfic cases enumerated by the law (Sec. 33).

The municipal councillors conduct their deliberations under the chairmanship of the burgomaster, who determines the time and place of meeting and order of business. Unlike the Prussian *Gemeindeverfassungsgesetz*, public sessions are permitted. The burgomaster may consult the councillors on any topic, and he must give them an opportunity to express themselves before taking action on thirteen specified subjects such as the enactment of ordinances and adoption of the budget. Although the councillors are positively forbidden to vote, they are encouraged to express their opinions freely. Thus the law reads: "Upon demand of the burgomaster, the individual councillors must express themselves with reference to the particular subject under discussion. They are obligated to express themselves if their opinion differs from that of the burgomaster" (Sec. 57). Moreover, dissenting views must be recorded in the proceedings.

One of the most characteristic features of pre-Hitlerite municipal government was the administrative committee or deputation. These agencies are retained in the *Deutsche Gemeindeordnung* under the name of "*Beiräte*" (Secs. 58–59). The *Beiräte* are made up of councillors and other private citizens, and are purely advisory. Under the chairmanship of the burgomaster or of one of the *Beigeordneten*, they function in connection with particular branches of administration.

The longest of the eight parts of the *Deutsche Gemeindeordnung* is Part VI on "municipal economy," which comprises no less than forty-six sections. So far as municipal administration is concerned, Part VI is undoubtedly the most important portion of the law. It contains detailed provisions relating to municipal property, municipal enterprises, debts, budgets, and treasury, accounting, and auditing procedure. Space does not permit an analysis of Part VI, but students of American municipal finance will find in it much that will repay careful study.

The *Deutsche Gemeindeordnung* establishes a new type of municipal government in Germany. The previous types—the *Magistratsverfassung*, the *Bürgermeisterverfassung*, and the *Stadtratsverfassung*—based as they were upon a greater or lesser division of powers, are completely set aside. The new government is most like the *Bürgermeisterverfassung*, or "strong mayor," form, but the leadership of the burgomaster is carried to the limit. Under such a plan, does municipal self-administration (*Selbstver-*

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waltung) still exist? The preamble of the *Deutsche Gemeindeordnung* asserts that it is in accord with "the true spirit of Baron vom Stein, the creator of municipal self-administration," and the National Socialists insist that self-administration has not been destroyed.[10] In support of this contention, it must frankly be recognized that the scope of local powers is substantially what it was before (Sec. 2). Under the general supervision of the state, municipalities may still undertake at their discretion such activities as promote the welfare of their inhabitants. The *Deutsche Gemeindeordnung* aims to give the burgomaster the same initiative and the same "home rule" power formerly enjoyed by the council and burgomaster or *Magistrat* jointly. The burgomaster is expected to act for the best interests of the municipality and in accordance with the wishes of the citizens as reflected in the advice of the municipal councillors. Legally, there is no effective local check upon the burgomaster. The voters do not elect the councillors. The councillors do not appoint or remove the burgomaster and *Beigeordneten;* they do not enact local ordinances; and they have lost the power of the purse. Whether in practice the new system will give the substance of self-administration remains to be seen. Much depends upon the personality of the burgomaster himself. It is conceivable that a burgomaster of tact and ability may rule in such genuine coöperation with his local advisers and with the citizens generally as to realize Stein's ideal.

One must not forget that municipal self-government in post-war Germany was in an extremely critical condition, due to the economic and social disorders and the excesses of the multi-party system. Particularly in the depression years, many municipalities were practically bankrupted by the ever-increasing cost of unemployment relief. There was a widespread breakdown of local government, necessitating extreme measures of state intervention. In Prussia alone, over six hundred state commissioners were appointed in municipalities.[11] There is some justification, therefore, for the National Socialist contention that the *Deutsche Gemeindeordnung* does not destroy local self-government, but, on the contrary, aims to build it anew upon more secure foundations so that it may once again recover and bloom as in the nineteenth century.

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Local Government in Italy under Fascism. The field of local government has proved to be one of the chief testing-grounds in Fascist Italy for the carrying out of far-reaching administrative experiments. No less than

[10] See, for example, Schneider, "Haben wir noch Selbstverwaltnung?," *Reichsverwaltungsblatt und Preussisches Verwaltungsblatt*, Vol. 55, pp. 34–36 (Jan. 13, 1934).
[11] *Der Gemeindetag*, Vol. 29, p. 66 (Feb. 1, 1935).

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other spheres of government, the local bodies have been subjected in Italy to complete changes, leading to the supplanting of long-established traditions of autonomy through a determined application of the new doctrine which assumes all authority to be derived from one, and only one, source—that of the central government sitting in Rome.

Prior to the seizure of power in Italy by the Fascist party under the leadership of Signor Mussolini, and during the first three and a half years of Fascist rule, local government in Italy was regulated by the law of February 4, 1915, which represented the last step in a long process aimed at securing to local bodies the largest possible degree of independence from interference on the part of the central government. The two fundamental units of local government, the commune and the province, enjoyed administrative autonomy, except for certain regulatory powers as to budgets and other financial matters vested in the local representatives of the central government, the prefects, and were headed by popularly elected officials. The latter was, of course, the outstanding feature of the system. Each commune had an elected mayor and an elected council, numbering from 80 members for communes of over 250,000 inhabitants to 15 members for those of less than 3,000. The council met in two three-month sessions each year, and chose a committee of from two to ten members (according to the population of the commune) to act as permanent advisers to the mayor. Several political parties were usually represented in the council, and the committee was designated by majority vote.

Each province was similarly governed by an elected provincial council, composed of from 30 to 60 members, according to the population of the province. The council met once a year and delegated administrative duties to a so-called deputation made up of from six to 10 members. The construction and maintenance of roads was the chief task of the provincial bodies; while the activities of the communes extended to a greater number of fields and were accompanied by a far greater power of taxation.

Viewing the past today, with the detachment of time, there can be no doubt as to the proper and smooth functioning of this elective system of local administration as a whole. Instances of graft and corruption were extremely rare, owing to the combined vigilance of the public, who could throw bad officials out of office, and of the prefects, who exercised their supervisory functions on behalf of the central government. The old system demonstrated its ability to adapt itself to the peculiar needs of the Italian people. Whatever remnants of regional culture and independence were saved from the inexorable forward march of centralization which went on from 1861 down to the present were preserved largely because of the existence of local bodies which tried to be the expression of the desires and of the necessities of the provincial population, rural as well as urban. And no one with the slightest knowledge of the striking differences exist-

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ing among the various component groups of the Italian nation can deny the advantages of a strong regional life as a source of strength and diversification to be weighed against the tendencies toward uniformity in the centralizing process. However, Fascism considered it to be one of its principal duties to fight regionalism. This fight has been carried on to its extremest consequences. It began in 1926, and can today be regarded as completed.

The centralizing tendency of the Fascist régime made itself felt in the sphere of local government with the royal decree of February 4, 1926, the first step toward the introduction of sweeping changes. By virtue of this decree, all communes of less than 5,000 inhabitants are governed no longer by an elective mayor and council, but by an official, named *podestá*, appointed by the central government for a term of five years, which can be renewed indefinitely. If the prefect of the province sees fit, the *podestá* can be assisted by a consultative body, the *consulta*, made up of no less than six members, one third of them appointed by the prefect at his discretion, the remaining two-thirds chosen by him from a panel submitted by the various syndicalist organizations of the town. In some cases, the *podestá* is bound to ask for the opinion of the councillors; in others, he has to ask it only if he thinks it necessary. In no case, however, is he bound to follow the advice thus offered. Of the 9,148 communes, 7,300 had less than 5,000 inhabitants, and fell therefore within the purview of the law.

The law was immediately enforced, the government proceeding to the dissolution of all popularly elected municipal councils, many of which, it may be added, had already been dissolved on political grounds. On August 31, 1926, an official *communique* announced that the experiment of the appointive *podestá*—an experiment which had lasted only about six months—had given successful results, and that, as a consequence, the new system would be extended to the remaining and more important 1,850 communes, still administered according to the old rules. This was done by a royal decree of September 3, 1926. The maximum number of councillors, who acted as advisers to the *podestá*, was set at 40 for towns of more than 100,000 inhabitants. For communes, however, of less than 10,000 inhabitants, the prefect has to decide whether councillors are needed. In every instance, the powers of the councillors are only consultative. Councillors are appointed by the prefect (in towns of over 100,000 inhabitants, by the minister of interior) upon presentation of lists of three names for each post allotted by the legally recognized local employers' associations and workers' syndicates. It should not be imagined, however, that the syndicates can proceed to the designation of the councillors in any manner resembling the old elective procedure. The names are put forward by the secretaries of the various groups, who are themselves government appointees.

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Thus the new system was applied throughout Italy. Whatever independence of local bodies had previously existed was swept away; whatever interest citizens had preserved in their own management of city affairs lost every possibility of expression. Complete powers were vested in individuals holding their offices at the pleasure of the central government, and subject only to its control. A former mayor of Genoa—a distinguished economist, Senator Ricci—vented his misgivings in a speech in the Senate on May 17, 1927. The possible financial consequences of the new system were uppermost in his mind. "Until today," he said, "municipal administrations rendered public account of their actions. Today, public discussion is suppressed. I ask if and how I as a citizen can get information as to the budget of the town to which I belong. What would become of a corporation which was not obliged to publish its reports and annual balance sheet? . . . The state publishes its budget in the *Official Gazette*, so that every citizen can examine it. But municipalities are not obliged to publish their budgets. Why?"

The question went unanswered, but it soon became apparent that the financial issue was the one destined to give origin to the greatest doubts as to the ultimate wisdom of the new system adopted for the administration of communes. A not small percentage of the *podestá*, freed from the pressure of an alert local public opinion, tended more and more towards a reckless use of public money, and showed a growing disposition to saddle the cities they administered with huge debts, many of them contracted in the United States on unfavorable terms. No complete figures are available, but it can be stated that the total debt of Italian communes has been increased, since 1926, by several billions of lire. In some cases, the situation created by this maladministration and the corruption which went with it was such that the central government had to proceed to the dismissal of the guilty officials, as in the case of Signor Belloni, *podestá* of Milan, where the squandering of public money reached appalling proportions. Of late years, however, this tendency seems to have been checked by reason of a growing sense of responsibility on the part of the *podestá*. Still, the greater efficiency of the appointive system remains to be proved.

The subordination of the communes to the central government thus achieved did not signifiy, according to Fascist leaders, the end of communal autonomy. It was merely a question, they pointed out, of coördination of the central organs with those of the periphery. A noted theoretician of Fascism, Professor Volpe, wrote in 1932 that "the intention of the legislator was not so much to check as to increase to the maximum the powers of these peripheral organs. In short, liberty is tempered with authority, and centralization with autonomy, as is the case throughout the institutions and actions of the Fascist government" (see Mussolini, *La dottrina del Fascismo*, p. 116).

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The long-range possibilities of the survival of autonomy in the administration of the communes under the new system may, however, be doubted. It is quite clear, from every indication available, that the local administrators tend to rely more and more for the formulation and carrying out of their policies on the advice of the ministry of the interior at Rome, which is responsible for their appointments. It will become increasingly necessary for the central administration to evolve a technique of local administration, and to provide the means for a study of local problems, down almost to the minutest details. What the final consequences of this imposing process of centralization will be cannot at present be established with any degree of certainty. Here again the onus of proof seems to rest with the sponsors of the new system.

The administrative bodies of the provinces are likewise no longer elective. The old councils were abolished. The law of December 27, 1928, provides for the appointment in each province by the minister of the interior of a *preside* and a council of *rectors*, whose function is merely consultative. The *preside* serves at the discretion of the central government. The *rectors* vary in number, according to the population of the province. Two-thirds of them are chosen from panels presented by the officials of the various syndical groups, and the other third consists of public officials and economic experts serving at the government's discretion. With the taking over by the central government of most road-building and maintenance, the functions of the provinces have been materially reduced, with a consequent lessening of their importance.

Besides the elected municipal and provincial councils, there existed in pre-Fascist Italy other elective local bodies: chambers of commerce and chambers of agriculture. These have all been suppressed and their functions absorbed in each province by a corporative economic council (see law of April 18, 1926, and decree of June 26, 1927). Each council is composed one-third of experts designated by the minister of the interior and of civil servants sitting ex-officio, and two-thirds of members chosen by the minister of the interior from panels drawn up by the secretaries of the various local syndicalist groups. The prefect presides over the council, which has usually merely an advisory function. When these councils were created in 1926, they were hailed as the institutions by which the vital forces of the nation would participate in the regulation of collective economic intersts. Two years after the task of creating these councils was finished, Signor Mussolini, in a message of June 17, 1928, stated that "whatever the location and quality of the land, the councils must be able to indicate the most suitable crops and the technical and economic methods of increasing them; they must survey all water-power resources; they must inform the central government of the present defects and the future possibilities in all fields of the economic life of the nation." These were un-

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doubtedly inspiring duties, and of the highest importance. That all was not well with these new bodies was proved by the numerous reforms to which they were subjected in December, 1927, in January and March, 1928, in January, 1929, and at other times. The amount of work accomplished has not been impressive, and they have not justified the hopes which Signor Mussolini put in them. A few, however, have issued useful and carefully prepared handbooks on the economic activities of their provinces.

If we try, in conclusion, to find out the real seat of power in the present organization of local jurisdictions, we are led inevitably to look at the ministry of the interior, acting through its local agents, the prefects. The prefects are the real authorities. They exercise the closest supervision over the *podestá* of the communes, the *preside* of the province, and the president of the corporative economic council. They have the power to annul their decisions, to suspend them from office, and to have them removed by the minister of the interior. Even a town clerk is appointed, not by the *podestá*, but by the prefect. As a result of numerous decrees and laws, the office of prefect is now endowed with virtually unlimited powers.

Thus it appears that Italian local government has not succeeded in escaping the firm grip of the totalitarian and highly centralized Fascist state. Fascism has here applied its theories with all the determination and thoroughness of which it has shown itself to be capable.

CARLO ROSSI.

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NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

Plans for the next annual meeting of the American Political Science Association call for sessions at Atlanta on December 26, 27, and 28; a visit to TVA projects at Knoxville on December 29; and closing sessions with the American Historical Association at Chattanooga on December 30. The meeting will open with a joint session with the Southern Political Science Association on the evening of December 26, the topic for consideration being "The Future of the South." On December 27, round tables, with leaders (so far as now arranged), will be as follows: (1) Is a Constitutional Convention Needed?, W. Y. Elliott, Harvard University; (2) Toward a Career Service System, Luther Gulick, Institute of Public Administration; (3) The Crop Control Policy, with Special Reference to the South, Wilson Gee, University of Virginia; (4) The Depression and State and Local Government, J. A. Burdine, University of Texas; (5) Government Operation of Economic Enterprises, Marshall Dimock, University of Chicago; (6) America and the Next War, Frederick S. Dunn, Yale University; (7) Employer-Employee Relationships in Europe, Johannes Mattern, Johns Hopkins University; (8) Recent Developments in Constitutional Law, Harvey C. Mansfield, Yale University; (9) Training Civics Teachers for the Schools, Carroll H. Wooddy, Des Moines Public Schools. On December 28, the second sessions of all round tables will be held; the annual business meeting will take place; and at a subscription luncheon, Mr. George F. Milton, editor of the *Chattanooga News*, will speak on the responsibility of the press in a democracy. There will also be a general session in the evening. At a joint subscription dinner with the American Historical Association in Chattanooga on the evening of December 29, the speaker will be Mr. David E. Lilienthal, director and general counsel of the TVA. On December 30, round tables (in conjunction with the American Historical Association) will be as follows: (1) The Historical Approach to Political Science, Carl J. Friedrich, Harvard University; (2) American Biography, Dumas Malone, editor of the Dictionary of American Biography; (3) Political Demagogues, Past and Present, Schuyler C. Wallace, Columbia University; (4) The Government of the Southern Confederacy, Frank L. Owsley, Vanderbilt University, and (5) American Diplomatic History, Arthur P. Whittaker, Cornell University. At a joint subscription luncheon with the American Historical Association, on December 30, one of the speakers will be C. H. McIlwain, Harvard University, and the topic will be "The Reviewers Reviewed." Program arrangements are in charge of a committee under the chairmanship

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of Professor James Hart, of Johns Hopkins University, and local arrangements are in the hands of a committee headed by Cullen B. Gosnell, Emory University. Announcements concerning arrangements for the visit to Knoxville will be made in a later issue of the REVIEW.

Dr. Lewis Meriam, of the Brookings Institution, will serve as visiting professor of public administration at the University of Chicago during the three quarters beginning October 1.

Professor Morris B. Lambie, executive secretary of the League of Minnesota Municipalities since 1921, and professor of political science and head of the Municipal Reference Bureau at the University of Minnesota, has resigned to accept a professorship of government at Harvard University.

During the summer session, Dr. Ben A. Arneson, of Ohio Wesleyan University, served as a member of the staff of the school of public affairs at the American University.

Professor Alpheus T. Mason, of Princeton University, is spending the summer in England. During the week of August 3–10, he lectured on the New Deal before the Liberal Summer School held at Cambridge.

Professor Joseph P. Harris has resigned his position at the University of Washington in order to accept the post of director of research with the committee on public administration of the Social Science Research Council. His headquarters will henceforth be at 850 East 58th St., Chicago.

Professor Donald C. Blaisdell, who served during the second half of the last academic year as acting assistant professor at the University of Wisconsin, has been appointed research associate in political science at the same institution for the year 1935–36.

Professor Milton Conover, of Yale University, has been made president of the American-Immigrant Institute of Connecticut—an organization supported by several members of the Yale faculty and designed to be of service in various ways to aliens desiring to become citizens.

Dr. Lewis L. Lorwin, formerly of the Brookings Institution, is now economic adviser to the International Labor Organization at Geneva.

A course in the political philosophy of Pareto will be given in the fall by Professor Max Ascoli at the New School for Social Research. Dr. Ascoli was professor of law in various Italian universities before coming to this country.

Dean Frederick A. Middlebush, who during the past year acted as president of the University of Missouri, was in June, by choice of the

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trustees, made the regular incumbent of the position. A condition on which he accepted was that he should be permitted to retain his title of professor of political science and public law, with the privilege of resuming active work in that capacity whenever he may desire to do so.

Professor Lane W. Lancaster, of the University of Nebraska, is now associate editor of the *Nebraska Municipal Review*, the official organ of the League of Nebraska Municipalities.

Professor John W. Manning, director of the Bureau of Governmental Research at the University of Kentucky, has announced that the Bureau will undertake a study of local governmental units for the State Planning Board.

Dr. Kenneth P. Vinsell, of the University of Louisville, is on leave of absence and is serving as director of the department of public welfare of the city of Louisville.

During the autumn semester, Professor Harold D. Lasswell, of the University of Chicago, will be a visiting member of the department of political science at the University of California, Berkeley. He will lecture on political propaganda and will conduct a seminar on methods of political research.

Professor Charles S. Hyneman, of the University of Illinois, is giving courses on American government and public administration at the University of Minnesota during the second half of the summer session.

During the closing portion of the past academic year, Professor Wilson Leon Godshall, head of the department of history and political science at Dickinson Junior College, Pennsylvania, substituted at Pennsylvania State College for Professor Harold Alderfer, who was engaged in field work for the American Municipal Association.

Professor Ernest F. Griffith, of Syracuse University, has become dean of the graduate school of the American University, Washington, D.C., where also, by recent action of the trustees, a separate department of international affairs has been established. In this department it is proposed to offer courses dealing with not only international law and diplomacy but economic, financial, and other phases of international relations.

At Dartmouth College, Dr. Donald L. Stone has been advanced to a full professorship of political science and also to a professorship of business law in the Tuck School of Business Administration. He has also been reappointed chairman of the department of political science for the period 1935–37.

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Mr. C. C. Ludwig, of the International City Managers' Association, Chicago, has accepted an associate professorship at the University of Minnesota. He will offer courses in administrative technique, direct the Bureau of Municipal Research, hold the secretaryship of the League of Minnesota Municipalities, and participate in directing the program of training for the public service.

Mr. J. William Robinson, who completed his work for the doctorate at Stanford University in June, has been appointed instructor in political science at the University of Idaho.

Mr. William B. Shaw, who received his doctor's degree at Princeton in June, has been appointed instructor in political science at the American University, Washington, D.C.

Mr. Asher N. Christensen has been appointed instructor in political science at the University of Minnesota.

Dr. Henry G. Hodges, of the University of Louisville, has been appointed associate professor of political science at the University of Cincinnati. He will be in charge of the Municipal Reference Library in the City Hall, and will direct the practical training of the non-technical students training in public administration. Mr. Emmett L. Bennett, who for a number of years was in charge of the Municipal Reference Bureau, has resigned to accept a position with the Cincinnati Bureau of Governmental Research.

Mr. Terence O'Brien, formerly of Magdalen College, Oxford, and instructor in government at Harvard University in 1931–34, has been appointed to a lectureship in politics and modern history at Balliol College, Oxford.

At the University of Kansas, Associate Professor Walter E. Sandelius has been promoted to a full professorship, and Assistant Professor H. B. Chubb to an associate professorship. Professor Frederick H. Guild will remain with the Kansas Legislative Council another year, and Professor Edwin O. Stene will continue in charge of his work at the University.

Professor Harvey Walker, of Ohio State University, spent the spring and summer quarters in Washington, where he acted as educational counselor of the National Institution of Public Affairs. During July and August, he taught in the summer session of the school of public affairs at the American University.

Mrs. George E. Frazer, of Winnetka, Illinois, daughter of the late President Edmund J. James, has established an endowed lectureship on government in the University of Illinois, of which Dr. James was president

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for sixteen years and of which Mrs. Frazer herself is a graduate. The lectureship is to be administered by a committee of the faculty of which Professor James W. Garner is chairman.

Under the direction of Professor Kenneth O. Warner, and sponsored jointly by the University of Arkansas and the sub-committee on political education of the Committee on Policy of the American Political Science Association, a conference on state and local government was held at Little Rock on May 10–11. Out of state political scientists attending included Professors Lloyd M. Short, University of Missouri; Roscoe Martin, University of Texas; David W. Knepper, Mississippi State Women's College; and J. J. Lenoir, University of Mississippi.

The Pennsylvania Local Government Survey, which was carried on continuously during a period of fourteen months, was completed and its report issued in April. The Survey staff consisted of Drs. Blake E. Nicholson, Edward W. Carter, and Bradford W. West of the University of Pennsylvania, Dr. H. F. Alderfer of Pennsylvania State College, and Dr. Philip B. Willauer of Ursinus College. The report covers over 500 pages and deals intensively with the county, the first- and second-class township, the borough, and the third-class city. Funds for the preparation and publication of the report were granted by the American Philosophical Society.

Under the auspices of the sub-committee on political education of the Committee on Policy of the American Political Science Association, a regional conference on the federal government's electric utility program was held at Yale University on April 12 and 13. Four sessions were held, the first two on the Wheeler-Rayburn holding company bill and alternative suggestions for regulation, the third on hydro-electric developments, and the fourth on the effect of the whole program on the state regulatory commissions. Members of the state commissions of Massachusetts, Connecticut, and New Hampshire, and of the New York Power Authority, and executives of the United Gas Improvement Company, the Hartford Electric Light Company, the Southern New England Telephone Company, and the Stone and Webster Engineering Corporation were in attendance, together with faculty members of several New England colleges and universities, and representatives of both the Law School and the department of the social sciences at Yale. A limited number of graduate and undergraduate students were invited to attend as listeners. Professors H. C. Mansfield and F. W. Coker of Yale made the arrangements. The discussion, though inconclusive, was frank and animated.

The first intercollegiate model World Court to be held in this country convened at Colgate University recently under the sponsorship of Pro-

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fessor Norman J. Padelford of Colgate and Professor Earle Ketcham of Syracuse University. Students in international law at Colgate and Syracuse represented the United States and Great Britain in a case arising out of a theoretical collision between two semi-public merchant ships in foreign waters. Cases, counter-cases, and oral proceedings were conducted in accordance with the Statute and Rules of the Permanent Court of International Justice. The panel of judges, drawn from outside institutions, was presided over by the Hon. Henry S. Fraser, member of the League of Nations Committee on Codification of International Law. The Model Court proved to be a most stimulating device for acquainting the students with the organization and functioning of the Hague tribunal and an excellent means of teaching certain principles of law. It is planned to make the Model Court an annual event for the two participating institutions, and to extend it to include other institutions that may be interested.

The ninth annual session of the Institute of Public Affairs was held at the University of Virginia from June 30 to July 13. Round-tables of particular interest to students of government included: (1) Reconstruction Problems in the Light of History, Professor Robert McElroy, Oxford University; (2) Latin America—International, Economic, and Social Developments, Professor Charles W. Hackett, University of Texas; (3) European Relations—Rebuilding Peace, Professor J. A. de Haas, Harvard University; (4) The Significance of American Membership in the International Labor Office, Mr. Spencer Miller, Technical Adviser, International Labor Office, Geneva; (5) Taxation for Prosperity, Professor Thomas H. Reed, University of Michigan; (6) Conflict and Coöperation Across the Pacific, Mr. Grover Clark, Wellesley College; and (7) Anglo-German Relations, Professor Friedrich E. Anhagen, Columbia University.

During the early summer, the Civil Service Assembly of the United States and Canada established a headquarters office in the building adjacent to the University of Chicago which is already occupied by other national organizations concerned with phases of government and public administration. The purpose is to bring about an effective liaison in public personnel matters between public agencies and officials, on the one hand, and college and university teachers and their students, on the other. In addition to furnishing technical advice and assistance on public personnel problems, the headquarters office will arrange for the publication and dissemination of material and studies dealing with personnel matters. Civil service commissions and other public agencies are expected to cooperate in furnishing information about their testing activities, organizations, practices, and undertakings, which will thereupon be made available, as far as possible, to members of the Assembly. In order to facilitate

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the exchange of information about research work and to avoid duplication of effort, the office will also obtain information concerning the research activities in public personnel problems that are going forward in colleges and universities, civil service commissions, and public and private organizations. The first issue of a *News Letter*, to be sent out monthly from the office, was distributed early in June.

The twenty-seventh annual governors' conference met in Biloxi, Mississippi, June 13–15. With eighteen governors and five representatives of governors present, it was regarded as the most successful conference of state executives as yet held. Major topics of discussion included vanishing states' rights (the challenge to state executives); federal emergency relief and the Works Relief Administration; revenue and budgetary problems of the states; the N.R.A. and the problem of continued recovery as a field for interstate compacts; critical examination of federal relief policies; and need for uniform state action regarding social and industrial legislation. Differences of opinion concerning recent developments in the national government's relief policies, especially the proposed works administration set-up, cut across party lines, with rather sharp criticism of the post-office-patronage basis evident. The conference, however, declined to adopt a resolution condemning this trend; and it reiterated the desire expressed in 1933 to work with the Administration on a mutual, reciprocal basis. Fear of further absorption of state authority by encroaching national activity was expressed, with the suggestion that states should be given leeway to work out policies in line with their respective situations in the matter of relief, and that serious consideration should be given to permanently beneficial labor and social security legislation through interstate agreement. The executives expressed the opinion that leadership in state affairs demands that the governors' conference be made more effective through the establishment of a full-time bureau or research agency to serve as a clearing house for problems of interstate action.

Under the auspices of the Committee on Civic Education by Radio and the American Political Science Association, in coöperation with the National Municipal League, an eleventh series of "You and Your Government" radio programs was started on June 18 on the general topic, "Taxation for Prosperity." The closing talks of the series (at 7:45 p.m., Tuesday, Eastern daylight saving time) will be as follows:

Aug. 20: Who Gets the Tax Money?
John N. Edy, Assistant Budget Director of the U. S.
Aug. 27: Processing Taxes
William Hard, Publicist

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Sept. 3: Sales Taxes—Pro and Con
Henry F. Long, Commissioner of Corporations and Taxation of Massachusetts
Daniel Bloomfield, Manager, Retail Trade Board of Boston
Sept. 10: Federal Taxation and Business Recovery
Frank R. Kent, Vice-President, *Baltimore Sun*
Sept. 17: Coördinated Tax Administration
John G. Winant, ex-Governor of New Hampshire and Assistant Director of the International Labor Office
Sept. 24: Harmonizing the Tax System
Fred R. Fairchild, Professor of Political Economy, Yale University

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Democracy in Crisis. By HAROLD J. LASKI. (Chapel Hill: The University of North Carolina Press. 1933. Pp. 267.)

The State in Theory and Practice. By HAROLD J. LASKI. (New York: The Viking Press. 1935. Pp. 299.)

In both of these books Mr. Laski describes the present portents of radical social change; and he warns that the change may come about violently. He hopes to show "how near our feet are to the abyss," or else to be shown that he has "misunderstood the situation." The crisis, as he sees it, arises generally from the fact that capitalism and democracy, which came into the world together, can no longer work together effectively or even live together peacefully. Capitalism became economically predominant in society during the eighteenth century and adopted the conceptions and institutions of democracy because it needed to destroy the theoretical and practical foundations of a traditional aristocratic order. It has never, however, been really democratic in either practice or aim; it has only maintained an appearance of democracy. It has set up, by degrees, a formal political equality; and it has pursued social policies that have secured generally a rising standard of living and has thereby seemed to hold out the promise of economic equality. There has never been any effective political equality, because the owners of capital have held control of the instrumentalities of education, discussion, and electioneering; and there has never been any substantial approach to economic equality, for throughout changes in standards of living, the wage-earners, tenants, and other non-owners have kept generally at the same distance behind the owners. While capitalism was "in its expanding phase," it could, without endangering its predominant social position, make concessions, in the way of expensive social legislation, that kept the masses sufficiently content. Now, in its period of "contraction," capitalism can no longer make these concessions without threatening the continuance of the profits upon which its privileges depend. The only reasonable thing for the masses of non-owners to do, therefore, is to seek a social order in which their opportunity to enjoy a decent standard of living, in keeping with the productive capacities of the age, is no longer dependent upon a minority's willingness to concede it. In other words, the latent inherent antagonism between capitalism and democracy having now become manifest, we should seek to set up socialism as the only way of achieving real democracy.

Can we move from capitalism to socialism gradually, constitutionally, and peacefully? We should make the attempt, if we are permitted. Change by an orderly method of rational deliberation and persuasion causes less

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suffering and is likely to be more enduring than change by violence. Wherever, therefore, the groups in control of the machinery of a democracy permit the machinery to operate fairly and freely, we should make full use of it. But are capitalists anywhere likely to allow a democracy actually to work for the abolition of capitalism? Mr. Laski thinks not. History, he believes, shows that most fundamental social changes—the abolition of slavery, the emancipation of women, the attainment of religious toleration, the inauguration of factory legislation—have been obtained by force, in a civil war or in sporadic acts of violence. And it is hardly reasonable to suppose that capitalists will voluntarily surrender their privileges. They have already shown that they will fight rather than abdicate. Where their whole system appears to be in danger, they give strong support to political régimes that destroy democracy altogether, as in Italy and Germany. In other countries, they seek to protect their system against serious encroachments by suppressing essential democratic rights; they oppose the public criticism of capitalism and the free exercise by workers of the right to organize and strike. Those who suffer from the present inadequacies and disorders of capitalism will have, therefore, to be aggressive and militant if they hope to achieve any substantial modification of that system.

Mr. Laski doubts, however, that a socialist revolution stands much chance of success, except where war throws a capitalist system completely out of gear. In advanced industrial countries, such as England and the United States, there is no sufficient revolutionary class consciousness or adequately able and courageous revolutionary leadership. The groups which would revolt are not in possession of the indispensable means of present-day warfare—the machine guns, heavy artillery, aëroplanes, and poison gas. A revolutionary group is not likely even to have the force of superior numbers; for in any conflict, in the near future, between capitalism and socialism, the former is likely to draw the support of a majority of technicians, managers, office-workers, professional men, and high-skilled wage-workers, who are inevitably concerned over the preservation of their insurance policies, savings accounts, and petty luxuries. Fascism, therefore, rather than socialism and democracy, seems more likely to triumph in the impending social conflict. It may enjoy its triumph "for a considerable period." Men endure the loss of freedom as long as the loss seems only a necessary price to pay for security and prosperity. But how long will fascism be able to provide these material benefits? Modern industrial methods require a concentration in management which crowds out small manufacturers and traders and allows them and others of the lower bourgeoisie security on only a very low level. The narrowly nationalist policies of fascism require a militant foreign policy which leads to war; war destroys even that low level of security,

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and creates generally a favorable chance for a successful socialist revolution. Thus fascist régimes destroy themselves, "in the long run," and clear the way for socialism. Eventually, therefore, real democracy may come; but only after a long period of oppressive autocracy.

In both of these volumes, Mr. Laski supplies many details for this "sombre picture," and in both, but particularly in the later volume, he sets forth a general theoretical background for his picture. What is new in the general development of his theory?

In the first place, Mr. Laski has now adopted fully the Marxist philosophy of history. Changes in methods of producing goods to satisfy material needs and appetites are basic and primary in determining changes in law, government, religion, education, science, and social morality. Other factors—"personality, tradition, logic"—have their "influence"; but "always" the economic factor is "predominant" and "most vital"; it is "the bedrock" of the whole social superstructure. The economic factor plays its controlling part chiefly through the class conflict which it generates. Significant struggles of history may have had the appearance of a conflict over religious, racial, or moral issues; but in reality they were contests for power between a rising and an established economic class. Today only the fundamental social conflict of interest between Capital and Labor is incapable of reconciliation within the existing economic and political organization of society.

In the second place, Mr. Laski has forsaken pluralism. He had already (notably in the *Grammar of Politics*) surrendered it in part—so far, that is, as was implied in the sort of political institutions he had proposed. Now he makes no effort to retain even shreds of his former theory. Ignoring his former emphatic repudiation of an unreal and barren theory of sovereignty, he now accepts that theory as supplying the only rational and realistic explanation of the state's distinctive function in society. The state, he now agrees, is in fact and in theory the supreme coercive organization of society, and will be such as long as it exists. In the introductory chapter of *The State in Theory and Practice*, it is true, he supplies at length a familiar criticism of Hegel and Bosanquet and still appears to regard their morally absolutist political doctrine as typical of the dominant tradition in political theory; Milton, Locke, Rousseau, and Green are again passed over as somehow outside the modern tradition. Nevertheless, in his own theory it is now the state, and not any lesser, more "spontaneous," association, that the workers must control in order to set up socialism; and the state will exist until it has, under socialist auspices, done its perfect work by setting up finally an economic order in which organized coercion will no longer be needed. A socialist government, he says, "is entitled, of course, to all necessary precautionary measures." On taking office, it will probably have to assume "vast

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powers"; for it is likely to be confronted by capitalist resistance and sabotage, so that it may be impelled to legislate "by ordinance and decree," "suspend the classic formulae of normal opposition," or, if the opposition is too determined, suspend "the parliamentary system"; and it must "mete out swift justice" to those who "tamper with the armed forces of the state."

We appear, then, to be entering an "iron age" in which, whether fascism or socialism rules, liberty and democracy will be in disfavor. Mr. Laski, as usual, sets forth his interpretations and predictions vividly and eloquently. He supports his confident generalizations with apt and striking illustrations, drawn from records of the recent past as well as from his lively observation of present-day events; but he is not so unscientific as to follow a current sociological fad and boast that his generalizations are rigid scientific inductions, uninfluenced by any sort of ethical bias or emotional interest. He repeats each point a good many times, without much variation in the substance or texture of his argument; but his discussion as a whole escapes tiresomeness, because of the constant artistry of his style.

FRANCIS W. COKER.

Yale University.

Deliver Us From Dictators. By ROBERT C. BROOKS. (Philadelphia: University of Pennsylvania Press. 1935. Pp. xii, 245.)

This book is written, not primarily for the political scientist, but for the general reader. The style is light and airy, at times almost flippant. There is considerable sardonic humor and pungent wit; there is an abundance of apt quotations from "the men on horseback" which tell their own story; there are several very effective reproduced cartoons. The régimes of Italy, Germany, and Russia are analyzed to discover the essential characteristics of dictatorships, and the personalities of Mussolini, Hitler, and Stalin are subjected to inspection and appraisal. The reader is never in doubt as to the author's opinion of dictators; that opinion is summarized in the title.

Contemporary dictatorships are not temporary and emergency régimes like those of ancient Rome; their avowed purpose and intention is permanence. But they are fundamentally unstable. They engender resentment and hatred, which spreads and deepens in spite of, perhaps because of, repression. There is no provision for the succession to the seat of authority. To maintain their power, dictators must follow and improve upon the methods of Machiavelli. If despotisms of the old order were based upon the principle of fear, as Montesquieu asserted, modern dictatorships embody the principle of terror. The instruments of espionage,

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concentration camps, and murder must be ruthlessly employed. But this is not sufficient. An extensive system of propaganda must be conducted, which undertakes to regiment the thought of the people to the official pattern. The use of myths—that of Aryan racial superiority in Germany, of the heritage of Roman greatness in Italy, of proletarian virtue in Russia—must be effectively employed. All freedom of speech and of the press must be stifled, and the schools become the instruments of indoctrination. A strong feeling of nationalism must be developed, even when, as in Russia, the theoretical premise of the régime is internationalism. Along with terror, propaganda, and repression, the dictator must use also the instruments of rewards and favors. He must find jobs for his loyal followers, profitable contracts and concessions for powerful economic interests, and special advantages for important social groups. In this he plays a rôle similar to that of the American political boss.

The attack upon the economic problem has, of course, been different in Italy and Germany from that in Russia. In breaking violently with the capitalistic system, communism has supplied the need for a new and basic economic faith which is absent in fascist régimes. The extent to which there is a definite alliance between great industrial and business interests and the one-man governments of Mussolini and Hitler is perhaps a matter of speculation. If these interests welcomed, and indeed assisted, the establishment of fascist control as the only means of preventing communist revolution, they have had to pay in heavy taxes and otherwise for the wizardry which has exorcised their particular devil.

The essential vice of dictatorship is "action without criticism." It represents a rank over-development of the executive function of government and an atrophy of the deliberative, investigative, and legislative functions. Its great political invention is the one-party system. "Violence is not," in the author's opinion, "the greatest of the evils entailed by dictatorship. That can be borne until, grown intolerable, revolt occurs. No, the greatest offense of dictatorship is its vulgarity. Strip away the romanticized versions of itself concocted to gull the outside world, there remains only the lowest and basest concept of humanity. The dictator believes—his every action reveals it—that masses of men may be driven by force, cajoled by one-sided propaganda, seduced by purely material rewards. He believes, moreover, that these methods of social control will succeed indefinitely. In short, he gambles that courage, intelligence, and unselfishness are extinct in the human race."

The author scoffs at the idea that President Roosevelt is or will ever become a dictator. On the basis of ten essential characteristics of dictatorship, he concludes that the United States is and will remain, under the present administration, a democracy. But he is not altogether sanguine of the indefinite continuation of democracy if all efforts to break the de-

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pression fail. The menace of men like Huey Long may not be easily dismissed.

WALTER JAMES SHEPARD.

Ohio State University.

The Nazi Dictatorship; A Study in Social Pathology and the Politics of Fascism. By FREDERICK L. SCHUMAN. (New York: Alfred A. Knopf. 1935. Pp. xxviii, 494.)

In his latest book, Professor Schuman, of the University of Chicago, has written a comprehensive analysis of German National Socialism in terms of a "realistic political science." Accordingly, the volume is not merely descriptive, although it is packed with interesting details; but it especially aims to probe deeply into the economic, social, and above all psychological, forces conditioning political activity. Psychopathology and the Lasswellian method and vocabulary are prominent throughout the study.

The work is divided into four parts, beginning with a brief prologue describing the early history of the National Socialist party. Then follows Book I, "The Conquest of Power," containing excellent descriptions of party machinery, methods, and finance; the "Gospel" of the NSDAP; and the tangled course of events out of which Hitler at last emerged to power. The section on the "Neuroses of the *Kleinbürgertum*" is exceptionally well done. In Book II, on "The Weapons of Power," the author discusses the uses of violence; the rôle of scapegoats; the dramatization of external threats, real and imaginary; cultural coördination; and the apportionment of material benefits among the various classes of German society. Although the National Socialist party "grew out of the social and spiritual sickness of the *Kleinbürgertum*, it became the tool of the established ruling classes against their enemies. . . . This inner contradiction of a 'socialistic' mass party serving the interests of Property and Profits is the secret of the economic and social progress of the Third Reich. . . . Hitler and his aides were compelled to talk 'socialism' and to glorify small business men, peasants, and wage-earners as a means of retaining their mass following. They were also compelled to appease aristocrats and industrialists or face destruction. This apparently impossible task was simplified by the neurotic and irrational character of mass expectations. Political sadism, the persecution of scapegoats, the glorification of war, the encouragement of racial megalomania, and the systematic inculcation of the new faith have afforded substantial psychic satisfactions to a populace whose sickness of the soul has progressed so far that it makes a virtue of poverty and abnegation, idealizes armed conflict and death, (and) prefers mythology to nutrition. . . . Circuses have in part taken the place of bread" (pp. 388, 389).

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The epilogue of the book is called *"Götterdämmerung"* and is devoted to a discussion of the Röhm revolt and the future prospects of fascism in general, which are viewed with Wagnerian gloom.

Dr. Schuman has produced a notable volume, brilliantly written, and studded with striking phrases and sentences. As an eye-witness of many of the striking events which he describes, he has succeeded in recapturing something of the atmosphere of the Third Reich. At the same time, scholarship has not been sacrificed. The work is fully documented, with index and appendices, and a conscientious effort has been made to seek out and weigh all the information at present available.

However, some criticisms may be noted. Valuable as is the psychopathological method for the analysis of National Socialism, there is danger of laying too much emphasis on "collective political insanity," "castration phobias," "phallic symbols," etc. Occasionally, the author indulges in gross exaggeration, as when he says that the party is "the instrumentality through which Hitler governs the Reich more autocratically than the most arbitrary of ancient Oriental despots" (p. 276). Finally, one does not have to be a "Friend of New Germany" to hold that Professor Schuman has unduly minimized the positive (as opposed to the "psychic") achievements of Hitlerism. The resulting picture is, therefore, blacker than it needs to be.

ROGER H. WELLS.

Bryn Mawr College.

A History of National Socialism. BY KONRAD HEIDEN. (New York: Alfred A. Knopf. 1935. Pp. xiii, 430, ix.)

Assiduous readers of the daily and periodical press in America are fairly well informed about developments in Germany since Hitler came to power. Few, however, have found it possible to secure authoritative information about the movement which brought him there. Knowledge of the earlier phases of that movement particularly has been largely confined to the more spectacular episodes, such as the Hitler-Ludendorff *putsch* in Munich in 1923, or the Nazi electoral successes after September, 1930. It is fortunate, therefore, that these readers will now find available an abridged translation of what is probably the outstanding treatment in German of the entire history of National Socialism. A considerable portion of the translation has been taken from Herr Heiden's *Geschichte des Nationalsozialismus*, published in Germany in 1932; the remainder has been based upon his *Geburt des dritten Reiches*, written and published in 1934 after he had left Germany.

Since an episodical treatment has been substituted for the orthodox chronological and organic development of the subject-matter, some may

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not consider the word "history" an appropriate description of this work. The substitution occasionally has undesirable consequences; he who reads it as history encounters many blank pages in the narrative and suffers no little irritation at the repetitious character of some portions of the book. The author's method, nevertheless, has its advantages in that it permits of a more extended description of salient events than would otherwise be permissible in a book of its proportions; the method also offers the opportunity of introducing lengthy biographical sketches of some of the principal political figures without arousing any accusation of digression.

The first few chapters are devoted to the origins and early development of the party. After describing its institution in 1919 at the hands of patriotic Bavarian artisans and disillusioned army officers, Herr Heiden traces the steps by which Hitler obtained control of it and gradually fashioned it into a political power. Herr Heiden ascribes Hitler's success to his extraordinary forensic and agitatorial talents, to his capacity as an organizer, and to his managerial ability. Above all, he ascribes it to the fact that Hitler realized, long before any other German politician, that existing political and social formulae would no longer satisfy a middle class pauperized by the inflation and depression, and proceeded to offer his party as the political instrument for that class's economic salvation. The narrative, at this point, is, in reality, a description of Hitler the politician rather than of the National Socialist party. As it progresses, it frankly becomes a portrait study of the leader. In it, Herr Heiden's principal task appears to be to prove, at the risk of contradicting some of his earlier statements, that Hitler has the logical mind of a Thomas Aquinas but not a shred of that intuitive understanding and intelligence to which the less informed have hitherto ascribed much of his success with the masses.

Most of the remainder of the book deals with the progress of the Nazi movement from 1930 through the period of its ascent to power in the Reich. Although the broad outlines of the story are fairly well known, Herr Heiden helps to clarify some of the more obscure passages. This service is rendered in his account of von Papen's resignation as Chancellor in November, 1933, of Schleicher's fall a month later, of the machinations of the camarilla surrounding President von Hindenburg, and of the circumstances of the Reichstag fire. A concluding chapter, devoted to appraisal and prophecy, contains many astute predictions as to the course of political development in the Third Reich, some of which, as indicated in a chapter appended after the book had gone to press, have already become fact.

It is a cause for some regret that the publisher's sense of economy and his inability to secure a competent translator should have resulted in this work being rendered into English so reduced in substance and in a style

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which suffers acutely from grammatical errors and from a failure to appreciate English idiom. The work, however, is so important that even these considerable drawbacks will not deny it a wide distribution. No one less familiar with the National Socialist movement than Herr Heiden—and there are few who possess his knowledge—can afford to comment on that movement in the future without first referring to this book. It is by all odds the most dispassionate, the most comprehensive, and the most revealing commentary on the present rulers of Germany that has yet appeared in English.

ARNOLD J. ZURCHER.

New York University.

God Among the Germans. BY PAUL F. DOUGLASS. (Philadelphia: University of Pennsylvania Press. 1935. Pp. xiii, 325.)

The present church-state struggle in Germany is the outstanding contemporary example of the age-old conflict over division of authority between ecclesiastical and temporal powers. Its Protestant phase—one of its aspects—has been studied by Dr. Douglass for two years and is described in the present volume, intended as "an introduction to the mind and method of National Socialism," and approaching the study of the Third Reich "through a description of the impact of the political movement upon the Protestant Church" (p. vii). Proceeding from a brief but very good description of the "Foundations of the Folkic State," the author first discusses the influence of theological currents upon political revolution, and consequently describes at length the racial mysticism of Alfred Rosenberg (the official cultural leader of the Nazi party), folkic religions, the Nazi "German Christians," the problems centering around the "Christian Jew" and youth in the Third Reich, the continued struggle for the organization of a national and Nazi-dominated Protestant church, and the present structure of German Protestantism. Interesting biographical sketches of such National Socialist leaders as Dr. Rosenberg, Bishop Müller, and others are interspersed in the text. On the whole, the book is descriptive, giving full and accurate information concerning pertinent situations, persons, and backgrounds.

More critical evaluations would have been welcome. While it is very valuable to know, for instance, that the chapter on Rosenberg's racial mysticism has been approved by him as "an adequate summary of his philosophy and cultural outlook" (p. ix), it is evident that most of the book's readers will lack the specialized knowledge necessary to evaluate Rosenberg's views critically. A résumé of, or at least references in the otherwise good selected bibliography to, the main German criticisms of Rosenberg's statements and views would have been of great help. A good

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deal of source material is included in the book in rather fluent translations, but the documentation is often incomplete. The final chapter on "The Significance of the Religious Struggle in the Third Reich" is valuable for the author's reasoned conclusions as to the political implications of the extended strife (pp. 299–306), but falls rather flat as to its organizational and theological implications.

Except for the limitations indicated, Dr. Douglass' book is a very good piece of work—thorough, reliable, fair, and readable. It provides important and needed assistance for those who wish to understand a complicated politico-religious situation which is producing repercussions throughout the Christian world.

JOHN BROWN MASON.

University of Denver.

The Art of Leadership. By ORDWAY TEAD. (New York: Whittlesey House. 1935. Pp. xi, 308.)

The primary aim of this volume is to set forth a theory of leadership and show how it may be applied. Consideration is given to types, traits, techniques, and the training of leaders, but Professor Tead's basic contribution is his conception of leadership itself as "the activity of influencing people to coöperate toward some goal which they seem to find desirable." The objective of real leadership is to create a sense of "self-fulfillment and satisfaction on the part of those led." His suggestions for realizing this aim are directed toward those occupying administrative posts in business, public administration, unofficial organizations of all kinds, and in politics, to the end that they may become real leaders instead of mere bureaucrats.

To transform bureaucratic leadership into real leadership requires, not only a redefinition of objectives in terms of group welfare, but an understanding of the true art of influencing others and the possession of certain qualities indispensable in any real leadership situation. The techniques of leadership are (1) suggestion; (2) imitation; (3) exhortation; (4) persuasive argument; (5) publicity; (6) reliance upon the logic of events; (7) a show of affectionate devotion; and (8) the creation of a typical problem situation, the pressure of meeting which teaches its own lessons. Of these, the last is regarded as the most effective. A knowledge of how to employ it is a quality of the good teacher as well as the good leader.

In his discussion of leadership traits, Mr. Tead is concerned not so much with leadership traits as they are, but with them as they should be. The real leader should have (1) physical and nervous energy properly conserved, dramatized, and correlated with the natural rhythms of energy; (2) a sense of purpose and direction; (3) enthusiasm; (4) friendli-

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ness and affection; (5) integrity; (6) technical mastery; (7) decisiveness; (8) intelligence; (9) teaching skill; and (10) faith. In the final analysis, the problem of training leaders is a philosophical one, for "the contagion of power cannot spring from a sense of futility or profound pessimism. . . . The greater the leader the more assuredly is there present in him faith that 'all is not vanity,' that 'life means intensely and it means good'."

The Art of Leadership is essentially a handbook for executives. Wholesome suggestions are given for overcoming such obstacles as love of power, emotional instability, obsessive fears, inferiority feelings, sexual frustrations, and sadistic tendencies. Special attention is devoted to problems peculiar to assistant leaders and women leaders, as well as to advice on how to give orders, reproofs, and commands, to allay rumors, to get suggestions, and to strengthen a sense of group identity. Although it does not extend the frontiers of scientific knowledge, nor offer much insight into actual techniques of scaling the pyramids of power in business and politics, this book should prove valuable for administrators and executives who really wish to raise the standards of personnel relations within their organizations. Mr. Tead has long been a student of personnel problems. He knows the many psychological cruelties that arise because of the petty, dictatorial tyrannies that exist throughout our organized and regimented life. On the basis of his experience and study, he has formulated a prescription. If, as he states, the prescription sets too high a standard, the pattern needs to be established.

HARWOOD L. CHILDS.

Princeton University.

Propaganda and Promotional Activities; An Annotated Bibliography. BY HAROLD D. LASSWELL, RALPH D. CASEY, AND BRUCE LANNES SMITH. (Minneapolis: University of Minnesota Press. 1935. Pp. xvii, 450.)

This bibliography containing 4,500 entries, prepared under the direction of the Advisory Committee on Pressure Groups and Propaganda of the Social Science Research Council, will be for some time to come an indispensable handbook for workers in this field. In view of more or less obvious considerations, it is difficult for a reviewer, and it may be unfair to the compilers, to criticize a work that has, on the whole, been done so well. The volume opens with an able discussion of the study and practice of propaganda by Professor Lasswell, and the entries in the bibliography are classified, with various headings and sub-headings, in seven parts, dealing with: 1, propaganda strategy and technique; 2, propaganda classified by the name of the promoting group; 3, propaganda classified by the response to be elicited; 4, the symbols and practices of which propaganda makes use, or to which it adapts itself; 5, the channels of

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propaganda; 6, the measurement of the effects of propaganda; and 7, propaganda and censorship in modern society.

The scope or breadth of the subject makes almost impossible demands, both upon the knowledge of individuals and upon the limits of space. Nearly every interest or phase of human life is a subject of group opinion, if not of public opinion; views with regard to it may, therefore, be influenced by promotional activities. To date, no one has succeeded in developing a classification that is entirely satisfactory; that used here represents a distinct improvement. Some headings, such as those of Parts 1, 2, 5, 6, and 7, will find everywhere a ready acceptance. Parts 2 and 3 attack the same problem from different angles. Labor groups and reform parties, for instance, may be interested in humanitarian and welfare policies, while on the other hand, hyper-patriotic groups may foster nationalism, militarism, imperialism, or may assume an extreme position in defense of existing institutions. Part 4 is concerned with symbolism. No one will deny that symbolism is important, but is it sufficiently important to be placed in a position of equality with the aspects of the subject dealt with in Parts 1, 2, 5, 6, and 7, or to be elevated above such factors as attachment to the soil and love of locality, ethnic influences, or the conflict between invention and change on the one hand, and the concept of social lag on the other? Any reviewer might find favorite topics which could have been dealt with more adequately; but surely the subject of types of leaders—in the political science field, types of political personalities—is important enough to be included in Part 5-C (or somewhere) in anybody's classification.

The items selected include books, pamphlets, and articles; it is inevitable that opinion should differ with regard to some entries that have been included and some others that have been omitted. It is impossible to discuss here individual titles of either type. One cannot fail to be impressed by the fact that, aside from standard titles and a few older works, so large a proportion of the material is of recent origin; this is, no doubt, an evidence of the increased interest in this field in the last few years. The annotations that accompany most of the book entries are brief, but clear and informing. One might question the inclusion of so many foreign titles and so many unpublished theses and materials hopelessly inaccessible to the large majority of those who will use the book, and one might wonder also why greater use has not been made of articles appearing in the so-called quality group of magazines. The publishers are to be complimented upon an exceptionally attractive and usable book, with very few typographical errors. Extensive author- and subject-indices (twenty-seven and fifteen pages, respectively) contribute greatly to the usefulness of the book.

W. Brooke Graves.

Temple University.

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The Gentleman from New York: A Life of Roscoe Conkling. By Donald Barr Chidsey. (New Haven: Yale University Press. 1935. Pp. viii, 438.)

Roscoe Conkling has waited long for his political biography to be adequately written. As Mr. Chidsey points out, the delay was due in part to the lack of personal memoirs and letters, and in part to the difficulty in estimating Conkling's importance in our national history. Conkling's hatred of publicity and his preference for working in caucuses, executive sessions, and closed conferences account in the main for the absence of a collection of personal papers. Although prominent in Congress for a number of years, he is best remembered as a political boss. Endowed with a superb physique and gifted as an orator, Conkling could easily have carved a much higher niche for himself in the hall of fame. Twice he declined to accept appointment to the Supreme Court, and he might have held cabinet positions or posts in the diplomatic service had he so desired. He despised reformers; yet his financial honesty cannot be impugned and he left office a poor man. He was a fighter who did not forgive or forget his enemies.

Recent biographies of Conkling's political contemporaries have covered the history of the period so fully that few important facts are disclosed in the life of Conkling which we did not already know. Mr. Chidsey, however, has proceeded with great industry to gather the available materials of Conkling's career and has woven them together in a fashion which leaves the reader with a very definite impression of Conkling and his time.

After brief periods of office-holding as district attorney of Oneida county and as mayor of Utica, Conkling entered definitely upon his political career when in 1859, at the age of twenty-nine, he was elected to membership in the House of Representatives. He was reëlected in 1860, was defeated in 1862, but was elected again in 1864 and began his fight with Blaine which lasted throughout the lives of the two men. In 1866, Conkling moved to the Senate, and shortly thereafter he became the boss of the Republican party in New York State. From then until his dramatic resignation from the Senate in 1881, he was a political personality to be considered seriously on all occasions. He did much to frame the government's reconstruction policy; he took a prominent part in the struggle for sound money; and he was chiefly responsible for the compromise which made possible the Electoral Commission of 1876–77. Concerning this latter bill, Mr. Chidsey remarks that if it had carried a statesman's name, that name would have been Conkling's.

Conkling's friendship for Grant and his opposition to civil service reform marked a definite turning-point in his political career. With the

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defeat of the third term movement for Grant, Conkling's political control began to wane, and it moved steadily downward to the crash. After his resignation he refused all political appointments and confined himself to the practice of law, wherein he had a great success. It was during this period that as counsel for the Southern Pacific Railroad he produced the journal of the Committee of Fifteen to prove that in the drafting of the Fourteenth Amendment it was intended that the term "person" should include artificial persons, hence corporations—a doctrine fraught with great consequences in the industrial life of the nation.

An otherwise excellent book has been marred by Mr. Chidsey's flippant style. In a serious political biography, it ought to be unnecessary to descend to the level of political "pot-boilers" to insure a reading public. The style is in marked contrast with the lengthy bibliography and critical notes which are appended to the narrative.

EVERETT S. BROWN.

University of Michigan.

The New America. BY THE RT. HON. SIR ARTHUR STEEL-MAITLAND. (New York: The Macmillan Company. 1935. Pp. xiii, 238.)

The author of this book, a former minister of labor in a British Conservative government, came to America on invitation of the Rockefeller Foundation to observe our social situation as the Roosevelt program of "recovery and reform" went into its second year. *The New America*, written after wide travel in the United States and intensive study at the Brookings Institution and the International Labor Office, is his report.

While the book is designed particularly for the British public, it should prove interesting to the American layman who wishes a summary but lucid exposition of the New Deal legislative program and its administrative history into the summer of 1934. The introductory chapter stresses the peculiarities of the American economic and political systems so that the English reader may more accurately view the difficulties of the Roosevelt régime. It is unfortunate, especially in view of the Schechter and other recent cases, that this discussion contains no account of the peculiar position occupied by the judiciary in our check and balance system.

The book sketches the events leading up to the "zero hour" of late February and March, 1933, briefly recounts the legislative history of the Seventy-third Congress, and then proceeds to the main task of describing and evaluating the major policies of the New Deal. In scope, it resembles the exposition presented a little earlier by Schuyler Wallace in his *New Deal in Action*. Steel-Maitland is more concerned, however, with reaching conclusions.

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The conservative but optimistic temper of his judgments is well illustrated by his statements about the N.R.A. He gives it credit for a substantial increase in employment, and for considerable effect in raising weekly earnings, but declares that "from a material point of view the N.I.R.A. was more of a hindrance than a help to recovery." Yet because of the psychological effect of the code structure, he opines that "with all its shortcomings" it "was preferable to the pains and uncertainties of a slow unaided recovery. . . ."

For the political science profession, the book contains little information that cannot be better obtained from other convenient sources—for example, from *Social and Economic Reconstruction in the United States*, by the International Labor Office. Its presentation of genetic facts is both weak and inaccurate. (It makes Theodore Roosevelt responsible for both the Sherman and Clayton acts.) Nevertheless, it is interesting to look at the current scene through the eyes of a distinguished public official from another land which is beset with many similar difficulties.

CHARLES MCKINLEY.

Reed College.

Foreign Bondholders and American State Debts. By REGINALD C. MCGRANE. (New York: The Macmillan Company. 1935. Pp. vii, 410.)

There has finally been added to the literature on foreign investments and international indebtedness a volume on the history of the American state debts. This study is based upon materials found in British, Dutch, and American (national and state) archives, as well as upon existing secondary literature. It should prove definitive on the historical aspects of the question, and must be read by every one interested in general American history or in the more specific problem of international capital movements.

The debts in question fall into two broad classes: (1) those which arose in the period of rapid internal expansion following the War of 1812, especially in the development of various public works, such as canals and railways, and in the payment of which difficulties arose in the forties; (2) those which arose in the Reconstruction period after the Civil War, and which gave rise to defaults in the late seventies and early eighties. Each group of debts is carefully analyzed by states, with emphasis upon origins and action by the state governments in regard to them. A brief concluding section presents the author's reflections upon the relation of these debts to the interallied debts and foreign reactions during the period since the World War.

Dr. McGrane's composite story of these loan transactions is one which runs amazingly parallel to the history of loans to many other new and

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rapidly developing countries. Is it inevitable that investors in foreign government bonds should be so short-sighted, or has there been want of knowledge of previous experiences? One wonders whether American purchasers of foreign (especially Latin American) securities during the decade just past would have been so gullible had they known in detail the experiences of those Europeans who, in the preceding century, so confidently purchased American state bonds. The optimistic tales about the future of the American states, the setting in of apparently inevitable financial stringency, followed in turn by acrimonious debates between creditors and debtors, and finally the default by some debtors unable to adjust income to expenditures, present a history so nearly parallel to our own later experiences as to be almost prophetic. Yet in the words of the author, ". . . how often does one generation give careful consideration to the historian's portrayal of the experiences of past generations?" Perhaps upon this almost willful disregard of earlier experience has depended the rapid opening and expansion of new territories which might otherwise have remained closed for many years. Yet the blessings of rapid development are not unmixed.

Quite in keeping with the reluctance of men to learn from earlier experiences of lending to foreign governments (and directly resulting from it) has been the slowness of men and governments in developing institutions to meet these recurring problems. It may be that now that the most desirable areas of the world have been through the era of overspeculation, the time is ripe for a united effort to set up international standards governing the whole creditor-debtor relationship.

Finally, it may be noted that Dr. McGrane's study raises once more the question of the international responsibility of states for the acts of their political subdivisions, a basic question of international law. Thus far, the United States has been able to evade the issue. How much longer it will care to do so, now that its own citizens are holders of large quantities of unpaid foreign securities, remains to be seen. In this regard, also, the time may be propitious for the establishment of some recognizable international standards.

WALTER H. C. LAVES.

Hamilton College.

International Security; The American Rôle in Collective Action for Peace. By PHILIP C. JESSUP. (New York: Council on Foreign Relations. 1935. Pp. xxiii, 157.)

This is a report prepared under the guidance of a committee appointed by the Council on Foreign Relations for submission to the Eighth International Studies Conference.

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In a hundred pages packed full of facts and comment relating to American foreign policy from 1919 to 1935, Professor Jessup presents the material from which the problem emerges. "The foreign policy of the United States during the last fifteen years may be characterized as based upon the principle of retaining liberty of action with entire freedom to form independent judgment upon facts and situations as they arise" (p. 105). In its relation to the American rôle, the solution of the problem of collective security rests upon definition of the paths into which the application of this principle would lead us in case the League of Nations and the signatories of the Briand-Kellogg Pact desire to take steps against an aggressor. In the author's opinion, these various highways of policy can best be indicated in a general neutrality agreement.

The steps involved in arriving at this conclusion are logical. Neutrality is still a legal possibility under both the Covenant and the Pact (pp. 131–135). The United States will be inclined to insist on its neutral rights during the period between the Council's appointment of a commission of investigation and action upon its report, and in case the Council is unable to reach a unanimous agreement on an aggressor (pp. 136–137). Such being the case, a conference between League members and the United States is needed in order (1) to define American action when we concur in a unanimous judgment on an aggressor and (2) when we dissent from such judgment, and (3) to provide for some security of neutral trade among neutrals in case of failure to identify the aggressor. Contraband lies at the center of the problem. The conference should deal with it through the device of joint certification of cargoes by both belligerents and neutrals, coupled with an agreement by which neutrals would yield the war-boom trade with belligerents in return for belligerent acquiescence in uninterrupted traffic between neutrals themselves (pp. 138–141). Also any general convention on neutrality should provide for the "solidary attitude" of neutrals contemplated in the Argentine Anti-War Pact. Such a neutrality agreement might be accepted by the United States in lieu of a general disarmament convention, the condition laid down by Mr. Davis for consultation and the waiving of American neutral rights in case of unanimous agreement (pp. 137–138).

Short of such an agreement, Professor Jessup believes that the imposition of sanctions by members of the League would not be greatly hampered if the United States imposed embargoes on both belligerents. But the problem of ultimate destination would no doubt arise, unless the United States took measures to restrict shipments to other countries. Advance agreement to a quota or rationing system with guarantee against re-exports would meet this difficulty (pp. 142–144).

Finally, criticism is directed at the present peace machinery on the ground that it affords no means for immediate investigation of factual

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situations. Suggestion is made that plans for permanent investigating commissions might be drawn up and embodied in a general consultative pact (pp. 144–147).

Whether security be viewed as a procedural problem or as one of high policy, these proposals merit serious consideration. In the former case, they cover all the points which the present situation leaves unanswered. And from the latter viewpoint they constitute an attack on the problem from the international, rather than from the national, angle. Admirable as they are, the Nye committee's proposals in this connection betray an isolationist desire. Coöperation through a neutrality agreement is preferable policy.

Nevertheless, it is regrettable that the limits of this study were defined so narrowly. Practicability is always a desirable quality in proposals of this kind. But adequate scope is equally desirable. And these suggestions lack scope. This defect cannot with justice be attributed to Professor Jessup, for he was working within the limits of practicability as conceived by the Committee. But so pressing is the problem of security that a searching inquiry into its basic conditions is greatly to be desired. This committee, or some equally well-qualified group, might appropriately undertake such an inquiry. In these pages there is evidence that certain of these conditions are recognized (pp. 110–116). An approach to the problem which was directed at these conditions would provide a body of data of great value in formulating broad policy. The need for such an inquiry is impressive; equally so is the need for fixing policy.

DONALD C. BLAISDELL.

University of Wisconsin.

The Soviet Union and International Law. BY T. A. TARACOUZIO. (New York: The Macmillan Company. 1935. Pp. xvi, 530.)

This study represents an attempt to set forth the Soviet Russian attitude toward international law, in so far as that attitude can be deduced from the writings of Marx, Engels, and Lenin, Soviet national laws and regulations, the treaties entered into by the Soviet government, and the works of Soviet authorities on international law. It was inevitable that the Russians, having set up a communistic state, should adopt conceptions of international law which differ from those generally entertained by the capitalistic world, and that their international policies should have been affected by these conceptions. Their attitude is determined in part by their conception of the state as a régime of class struggle which as a result of successful revolution will, they teach, ultimately disappear and be replaced by a world-wide, denationalized, classless society in which there will be no need and no place for a system of inter-

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national law. Until this dream is realized, however, the soviets feel obliged as a matter of expediency to recognize the necessity of international law, although they propose to interpret it in the light of their own political and legal philosophy and to adapt it to their peculiar situation.

The result therefore is the development of a new school of international law which may be designated as "the Soviet international law of the transition period." As conceived by Russian communists, international law is "a provisional inter-class law which aims to further the interests of organized national laboring classes in their common struggle for proletarian world supremacy." Their admission of the necessity of some rules governing the regulation of international relations during the "transition" period is a conscious concession on their part to capitalistic theory and practice.

It is not always easy, as the author points out, to determine what is the Soviet attitude toward particular rules of international law, because the Soviet government has not yet expressed its opinion on some of them, nor has there been any practice indicating its views. So far as can be ascertained, however, it appears to accept, at least provisionally, many established principles observed by capitalistic societies; the innovations which it has introduced in practice are therefore exceptional. Some of them may here be noted.

The Soviet government denies the applicability of the doctrine of the continuity of states when a state has undergone profound political and social changes such as Russia has experienced, and *a fortiori* it denies in such circumstances the binding force of treaties concluded by governments which have been overthrown as a result of a violent and far-reaching revolution. Naturally, Soviet jurists attribute a larger weight to the rule of *rebus sic stantibus* than is generally given to it in other states. In the case of the formation of the Soviet Union, the Russian government accepted the doctrine of state succession in the matter of the assumption of the financial engagements of the separate republics joining the Union; whether it would do so in the case of the annexation of non-Russian territories is not clear. The Russian government recognizes a large part of self-determination on the part of minority races and nationalities. Intervention, at least for the purpose of aiding communists of foreign states to overthrow their capitalistic oppressors, appears to be regarded as a commendable and justifiable act. As is well known, the Soviet government renounced Russia's rights of extraterritoriality in the Orient, and presumably it is opposed to the whole principle. In the matter of nationality, it appears to have been the first government to introduce the principle that marriage to an alien does not deprive a woman of her nationality, and it is one of the few governments which does not insist

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on residence as a condition of the naturalization of an alien. It ranges itself with the governments of Great Britain and the United States in not refusing to extradite its own nationals. A striking innovation upon the general practice of nations was the abolition of different ranks in the diplomatic service and the substitution of the single rank of "representative plenipotentiary." Quite different also from the general practice of non-communistic states have been the limitations which the Soviet government places upon the customs privileges of diplomatic representatives of foreign states—restrictions which led to protests in some cases.

Other Soviet innovations upon or deviations from the rules of international law or practice observed by other states might be mentioned. Those referred to above are sufficient to show that the Soviet theory and practice are not in accord with that of capitalistic society in respect to a good many matters. Except, however, for their rejection of the rule of the continuity of states in its application to treaty engagements, the conflict between Soviet international law and that of the rest of the world has not been serious in practice. But in view of other divergent conceptions, it is by no means certain that there are no dangerous controversies ahead.

It is a pleasure to be able to say that Mr. Taracouzio's study has been admirably done. It bears the evidence of scholarship and careful research and is altogether a valuable contribution to the current literature of international law.

JAMES W. GARNER.

University of Illinois.

The Spanish Origin of International Law: Francisco de Vitoria and His Law of Nations. By JAMES BROWN SCOTT. (Oxford: At the Clarendon Press. 1934. Pp. 19a, 288, clviii.)

This is clearly a work of love as well as of great learning and critical scholarship. In the midst of a busy life devoted to promoting the progress of arbitration as a practical institution for the settlement of international disputes, the author has found time to continue unremittingly his research work into the origins of international law and the development of its leading principles, and he has thus established a link between the past and the present which is not only of academic significance but of legal and ethical value as well.

The present volume, dealing with the contribution of Victoria to international law, forms the first of a larger work under the general title, "The Spanish Origin of International Law." Two further volumes, as yet unpublished, will deal with Ayala, Suarez, and other Spanish writers, with the Italians Belli and Gentili, and with Grotius. The author, while dis-

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claiming special pleading, admits that this first volume of the series has a thesis, namely, that there was a Spanish school of international law in the sixteenth century, that Victoria was its founder, and that the writings of Victoria set forth a law of nations "which was to become the international law not merely of Christendom but of the world at large." In support of this thesis, the author presents a sympathetic analysis of the conditions under which Victoria's lectures were delivered, and he endeavors to detach the great principles of law set forth by Victoria from their immediate environment and to show their application as rules of international conduct at the present day. This is what gives significance to the work and changes it from a mere historical study into a constructive treatise upon the nature of international law.

Three preliminary chapters are devoted to the "Era of Discovery," the "Historical Background of the Spanish School," and a "Survey of the Leading Events of Victoria's Life." Chapters IV to VI contain a detailed analysis of the lectures *De Indis Noviter Inventis* which Dr. Scott believes to be "the proclamation of the new international law, and indeed of the law of nations which is yet to be." The study of *De Indis* leads to an examination of "Victoria and Natural Law," which contains the gist of Victoria's contribution to the theory of international law. To Victoria, international law had "not only the force of a pact and agreement among men, but also the force of law; for the world as a whole, being in a way one single state, has the power to create laws that are just and fitting for all persons, as are the rules of international law." Presented with the question of the rights of the Spaniards in respect to the Indians, Victoria makes his answer the basis of a larger system of international law in which principles of justice based upon the natural law and upon custom and treaty become the principles of a universal law for all mankind.

Chapters VIII and IX deal with the law of war according to the teachings of St. Thomas and St. Augustine and with an analysis of Victoria's lecture, *De Jure Belli*. Here, as in the reading *De Indis*, Victoria appeals to fundamental principles of justice as against the physical power of the conqueror, and he seeks to put restraints upon the arbitrary exercise of force as well when applied against a backward race as against a European power. War is justified only in defense of one's self and one's property and as a punishment of the wrongdoer. Its object is the peace and security of the state; but this more immediate object must be subordinated to the "good of the whole world" in the sense of the reëstablishment of law and order.

Further chapters deal with Victoria's reading *On Matrimony*, *On the Civil Power*, and *On the Use of Reason*, and with "The Liberalism of Victoria." A final chapter summarizes Victoria's "Contribution to International Law." Here the author restates some of the fundamental prin-

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ciples of the present law of nations and shows their origin in the teachings of Victoria. Among these, the primary conception is that of a society of nations forming a legal as well as a moral community, and having the right to impose its will upon the individual members of the community in the interest of a common humanity. The doctrine of the sovereignty of states, the author points out, was thus rejected by Victoria as it must be rejected by the community of nations today if international law is to survive. In closing, the author presents us with a series of appendices, running to some 130 pages, containing the original texts of Victoria's readings.

Once more, students of international law must express their appreciation of the "Classics of International Law" with which the Carnegie Endowment has enriched their materials for the study of the historical development of their subject. Within a generation, owing chiefly to the labors of Dr. Scott, it has become possible for scholars to examine the problems of their modern world in the light of the great traditions of the past.

CHARLES G. FENWICK.

Bryn Mawr College.

The Liberal Way; A Survey of Liberal Policy, Published by the Authority of the National Liberal Federation. With a Foreword by Ramsay Muir. (London: George Allen and Unwin, Ltd. 1934. Pp. vi, 224.)

Once the Liberal party's program was to be found in the public statements of its great leaders. Today, though the speeches of Sir Herbert Samuel command respectful attention, his party puts forth a program made by a committee and approved by a conference. *The Liberal Way*, like any other statement whose authors have had to reach a compromise on vital issues, will hardly bring inspiration to its readers; for the middle way—which the Liberal party here takes—seems altogether more likely to be the road to Laodicea than to Westminster.

Underneath the verbose and non-committal wording is, however, a program which is capable of commanding intellectual respect. In his introduction, Mr. Ramsay Muir picks out free trade and free enterprise, peace through the League of Nations, political liberty, and enough planning to take care of unemployment, as the chief elements of the Liberal program. The acceptance of any measure of "planning" is a concession to a general tendency in English thought, and is contrary to the views of old-fashioned Liberals. To satisfy these old-fashioned Liberals, however, the program offers a stern resistance to socialism. *The Liberal Way* sponsors state regulation rather than nationalization or state management in domestic affairs, though it is insistent upon govern-

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mental control of banks, investments, transport, electric power, and the coal industry. For agriculture, it proposes a more efficient use of land through small holdings.

These proposals make a reasonably consistent scheme of national life. They are different from the proposals of the Conservative and Labor parties. They have been before the electorate for over a year, for they were published in pamphlet form early in 1934. As far as one can judge from results in by-elections, they are not attractive to the voter.

E. P. CHASE.

Lafayette College.

Social Judgment. By GRAHAM WALLAS. (New York: Harcourt, Brace and Company. 1935. Pp. 175.)

This book consists of chapters written by Graham Wallas and here brought together, almost unchanged, by his daughter since his death. As pointed out in the editor's note, the work forms a last link in the author's writings, which were all alike devoted to the problem of "how knowledge of the nature of the individual may be used for the good of mankind." The special problems to which he here addresses himself are the analysis of the process known as "judgment," and the question as to whether and how far the influence of judgment on corporate action can be so increased and directed by conscious effort as to secure better social and political organization.

Mr. Wallas finds social judgment to consist in "coöperation between reason and socially valuable emotion." He finds, moreover, the present world distress to be largely the result of the uncoördinated growth of specialized science, coupled with the fact of the increasing refusal of specialized scientists to accept responsibility for the social results of their work. In his opinion, judgment rather than knowledge can alone solve the present social ills. In Chapter II, entitled "Judgment and Knowledge," his main conclusion is that only that knowledge which one has made one's own through an estimation of its significance can serve as a necessary condition of modern social judgment.

The following chapters are devoted to the problem of whether human beings can by voluntary effort "increase the social efficiency of the natural judgment process." In a rapid survey, the author finds that the great creative periods of history have been those in which both the emotion and the reason of thinkers have been stimulated. At present, however, he discovers a tendency in both economic and religious thought to assign reasoning and emotion to separate "universes of discourse." Yet his conclusion is that "the formulation and practice of an art of harmonization (of reason and emotion) with a hitherto unknown degree of success is not

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an impossible human ideal." "It is not too soon," he tells us in closing, "for us in our new world of mechanical civilization to take up once more the old search for wisdom," the essential element of which, he has already suggested, is the "due balance among the faculties."

One must regret the more, because of the critical situation in which the world now finds itself, that these chapters might not have been followed by the second part of the work as planned, in which the "institutions through which judgment influences social action" were to have been discussed.

ELLEN DEBORAH ELLIS.

Mount Holyoke College.

Ceylon Under British Rule, 1795–1932; With an Account of the East India Company's Embassies to Kandy, 1762–1795. By LENNOX A. MILLS. (London and New York: Oxford University Press. 1933. Pp. viii, 314.)

The Third British Empire. By ALFRED ZIMMERN. Third Edition Revised and Enlarged. (London and New York: Oxford University Press. 1934. Pp. xii, 192.)

These two books emanate more or less directly from that British university which has always been most closely connected with politics and particularly with the politics of empire. In that fact, as well as in their contents, the books are important evidences of contemporary political thought. It is Professor Zimmern, a fellow of New College, Oxford, who in the first edition of *The Third British Empire*, published almost ten years ago, suggested to a skeptical world that it is possible to justify the British Empire in a world where all respectable sentiment has come to disapprove of imperialism. Since then, the Statute of Westminster has legally confirmed the developments which Mr. Zimmern traced, and this new edition of his book (whose generalizations are admirably illustrated by quotations from documents) is a thoroughly contemporary interpretation of the British Commonwealth of Nations.

If that empire, or commonwealth, is now an empire based on liberty, Ceylon is a good example; and Mr. Mills' study of *Ceylon Under British Rule* shows how such things have come to be, in one corner of the dominions of the British crown.

Mr. Mills, who studied history at Magdalen College, Oxford, has written a specialized volume, historical in presentation, to be sure, but concerned with the matters which interest the political scientist—the constitutional and economic development of Ceylon from its earliest days as a dependency of the Indian administration to its recent achievement of democratic self-government. The substantial and carefully documented

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story lacks prejudice and over-emphasis, and it places Ceylon in that small and fortunate class of political divisions of the world whose governmental development is definitively accounted for and explained.

E. P. CHASE.

Lafayette College.

Police Administration in Boston. By LEONARD V. HARRISON. (Cambridge, Mass.: Harvard University Press. 1934. Pp. viii, 203.)

This compact book, which constitutes Volume 3 of the Harvard Law School Survey of Crime in Boston, not only presents an incisive analysis of the problem of police administration in Boston, but because of its broad perspective contributes appreciably to the general literature on police administration. The careful treatment, pleasing literary style, wealth of charts and appendices, and rare skill with which the author steers between unreasonable criticism and undeserved praise should favorably impress both students and officers of public administration. By frequently comparing Boston with other cities of the United States and Europe, Mr. Harrison adds greatly to the sharpness of the Boston negative and enlarges the study into more than a monograph on the police system of a single city.

In the face of unusual difficulties, the Boston police are "giving a creditable performance, judged by the standards of American cities at least." Nevertheless, Mr. Harrison believes that the reclassification of personnel into police proper and safety corps, each with distinct standards and salary scales, and the creation of a departmental personnel unit, recruiting younger men of greater character and education, to replace the civil service commission, would materially increase efficiency. The civil service commission would approve examinations and eligible lists. Although the police training school outranks many others, longer training, smaller classes, and greater integration would improve it. Little fault can be found with the dismissal policy, but the more important promotions problem requires attention.

Recommendations calling for a patrol plan based on careful surveys, a straight three-platoon system, a more mobile reserve squad, more adequate records, and additional signal facilities, motor equipment, carefully planned station houses, and staff and tools for the bureau of criminal investigation possess little novelty. The creation of a legal staff within the police department to prevent undue participation by the district attorney's office in police work, a tactics board for general planning, and non-police vice control to minimize the danger of regular police contamination fall into a somewhat different category. Mr. Harrison favors the establishment of a metropolitan police system for greater Boston, on

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the grounds of economy, efficiency, and greater freedom from local politics. It may be regretted that this study in the main extends only to 1930; but much has been done by judicious use of addenda to bring it down to include 1934.

HAROLD ZINK.

DePauw University.

BRIEFER NOTICES

AMERICAN GOVERNMENT AND POLITICS

An elementary explanation of the rules of the House of Representatives should be of some value to students in descriptive courses in American government and to others interested in parliamentary practice. In his *Parliamentary Law and Procedure* (Ransdell Incorporated, pp. xv, 176), John Q. Tilson, former majority leader of the United States House of Representatives, makes a plea for the use of the rules of that body in other assemblies. Accordingly, he has selected for inclusion in this manual of parliamentary practice chiefly those rules which may have general application. Individual chapters are devoted to specific rules, with an explanation in each case of the meaning of the rule, of how the rule is applied in practice at Washington, and of how it might be used in other bodies. Thus, Chapter IV is concerned with Rule I—Duties of the Speaker; Chapter V, with Rule IX—Questions of Privilege; Chapter VI, with Rule XIV—Decorum and Debate; and so on. The author is particularly critical of Paragraph 4 of Rule XXVII (referred to in the Contents as Rule XXVIII) on the discharge of committees, but unfortunately gives no explanation of how and why it came to be. Several chapters deal with parliamentary practice in general. Chapter II is a brief historical sketch of the development of parliamentary law in relation to majority rule. In the late chapters, consideration is given to action by unanimous consent, filibusters, and committees. To the reviewer, Mr. Tilson's justification of some filibusters is to be classed with the idea that only "defensive" wars are justified. But it may be just as well to have the point of view expressed. The manual seems quite free from errors. There are some unnecessary repetitions, but they do not detract materially from the volume's usefulness.—C. I. WINSLOW.

Section 7(a) of the National Recovery Act granting to labor the right "to organize and bargain collectively through representatives of their own choosing" has created greater and more sustained controversy than any other section of that "great experiment in social planning." We are indebted to William H. Spencer for his scientific attitude in presenting

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in his *Collective Bargaining Under Section 7(a) of the National Recovery Act* (University of Chicago Press, pp. 89) both sides of an issue much impregnated with perverted thought. The recent Schechter case invalidating N.R.A. will be recorded only as a temporary deterring factor in labor's long struggle to promote its right of collective bargaining. As the author has stated, Section 7(a) "is merely a phase" in organized labor's fight for a more adequate legal basis for employer-employee relationships. It might be added that it is an extremely important phase, in that it has permitted further laboratory tests of the feasibility of the incorporation of labor philosophy in legislation. More important than the phraseology of Section 7(a) is the administrative interpretations applied or read into that phraseology. Professor Spencer rightly questions the soundness of rulings which infer that it is the duty of the employer to reach an agreement, that the representatives of the majority of the workers, ascertained by an election, shall enjoy the privilege of speaking for all employees, resulting in the complete annihilation of minority representation, and that any labor organization the membership of which is restricted to the employees of a single employer is a company union within the meaning of Section 7(a). In his final chapter, the author proposes several modifications of Section 7(a) that might be embodied in new legislation. The monograph accurately reflects the practical experience and theoretical training of its author, and merits the attention of all careful students of labor relations.—CHARLES C. ROHLFING.

A comprehensive, scholarly analysis of past and present methods of teaching the Constitution of the United States is contained in H. Arnold Bennett's *The Constitution in School and College* (G. P. Putnam's Sons, pp. 316). The author, with a doctorate in public law and jurisprudence (Columbia) and experience on the faculty of the New York State College for Teachers at Buffalo, outlines the principles which in his judgment should underlie the teaching of this subject. To find whether these or other principles adequate to the purpose of facilitating rational political progress have been applied, the reports and recommendations of political scientists and educationists are examined. These reveal a disappointing lack of leadership. "Neither political scientists, educationists, nor classroom teachers of the social sciences developed an adequate philosophy for the teaching of the Constitution." Consequently, the schools tend "to follow, rather than to lead, in the matter of the teaching of the Constitution." Textbooks of all periods are analyzed. Many, written by nonspecialists, show a deplorable lack of "knowledge of the science of government, more particularly elementary constitutional law." Others, especially in the early period, "failed to treat of the Constitution as a thing of life." Even the period since 1920 "comes to a close without the pub-

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lication of a text on the Constitution for the younger generation that realizes the pedagogical potentialities of that document." The effects of legislation in the forty-three states where Constitution-instruction statutes are now in force are found to be negligible. An analysis of courses of study, examination questions, oratorical contests, and "best-teacher" practices confirms the conclusions tentatively reached on the basis of the research described in preceding chapters. The author concludes with an explanation of his "neo-juridical method" of instruction. This method is based on his findings that earlier methods over-emphasized structure and largely ignored the economic and psychological bases of politics and that methods now prevalent disregard the popular inhibitions resulting from constitutionalism—inhibitions that President Roosevelt has apparently decided are too firmly entrenched to be overcome by direct attack. These inhibitions are to be dispelled, not by disregarding the Constitution in the teaching of civics and government, but by dealing with it boldly, as the central fact in American political society. Whether political scientists generally agree with Dr. Bennett's thesis, they will find that much of the material in this book stimulates them to improvement of teaching methods. They will look forward with interest to the publication of his projected "college text in American national government via the Constitution." The book which is the subject of the present brief review should be studied thoughtfully by all teachers of civics and government, by the curriculum-makers of the public schools and teacher-training institutions, as well as by patriotic societies and legislative bodies which try to make young people good citizens by legal prescription.—HOWARD WHITE.

Arkansas State and Local Government (Burgess Pub. Co., Minneapolis, pp. 200, mimeoprint), by Kenneth O. Warner, is primarily a description of Arkansas state government. There are thirteen chapters on state government, one on cities and villages, and one on counties. Three additional chapters present proposed reforms: one on reorganization of state government, one advocating county consolidation, and a third presenting "The Way Out for Arkansas." However, reforms are suggested in nearly every chapter, justifying the author in placing himself among the "crusaders for reform" (p. 186). Among the more important reforms discussed are a new state constitution, embodying the short-ballot principle; modernization of election, taxation, and judicial machinery; a state police system; the merit system; unicameral legislature and split session; more effective auditing, budgeting, and purchasing in state and local governments; city and county manager plans; home rule for cities and counties; and county consolidation. Considerable space is devoted to definitions, quotations, and recent developments in other states. There is some historical material, but scant worth-while, first-hand data. The

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first-hand data regarding campaign methods, elections, and judicial processes are mostly hearsay or street gossip—interesting whether true or false, but of little value. Some important topics are given little consideration, while minor ones are discussed at length. The suggested reforms are sometimes inconsistent. These defects are perhaps due to the material being prepared hastily, as explained by the author. In its present form, the book should be useful as a supplementary text for Arkansas college and high school students, for whom it was written. Several questions, problems, and references are indicated at the end of each chapter. But the volume cannot be considered a contribution to the literature in its field until the material on state government is revised, more authoritative and first-hand data incorporated, reform programs coördinated, and the material on local government expanded.—WILLIAM L. BRADSHAW.

In a report entitled *The Personal Income Tax and the Crediting Device* (American Legislators' Association, pp. 55), prepared for the Interstate Commission on Conflicting Taxation, John W. Martin, H. L. Macon, and John M. Akers present clearly and concisely the case for permitting natural persons to set-off state income tax payments against federal income taxes. The authors point out the evils of the dual system of personal income taxes existing in twenty-seven states, and believe that the crediting device would permit the national government to coerce the states into the use of a uniform system to the mutual advantage of national and state governments and taxpayers. Numerous tables are used to show how the device would work out in practice. The authors believe that if a credit is to be allowed, the federal tax-base should be broadened and fewer credits allowed in the upper brackets. It is pointed out that a graduated federal credit for state taxes would be more equitable, but would be complicated to administer. For this latter reason, a tax credit of 75 per cent is suggested for incomes up to $10,000 and of 25 per cent on incomes above that amount. Of course, state income taxes might exceed the federal credit.—P. S. SIKES.

The Merit System in Illinois (Joint Committee on the Merit System, Chicago, pp. 62), by Joseph Pois, Edward M. Martin, and Lyman S. Moore, constitutes a brief but effective presentation of the problem of the civil service in a state noted for its attachment to its old political tricks. The authors give a frank catalogue of the favorite methods of crippling a merit system. One of the baldest is explained in the words: "Our civil service laws provide that the names of veterans shall automatically go to the head of the eligible lists." As might be expected, the number of temporary appointments is enormous. The administrations of

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Chicago have consistently sabotaged the service. The authors point, however, to an impressive number of successful attempts to uphold merit system principles in the Illinois courts. Another significant sign is to be found in the existence of several voluntary merit systems outside the scope of the law. It seems to the reviewer that the authors hit the real center of present need by the remark: "The writers of this report . . . feel that the efforts of civic-minded individuals, when properly organized and directed, can make significant contributions to public personnel administration in this state."—LEE S. GREENE.

The Third Year Book of School Law: 1935, edited by M. M. Chambers (M. M. Chambers, Washington, pp. 119), resembles both in form and content the first and second publications of the same series which appeared in 1933 and 1934. The present issue deals with the statutory and case law of the year on such subjects as the rights and duties of pupils and parents; certification, appointment, tenure, and retirement of teachers; local school boards and officials; the acquisition of property; liability of school districts, officials, and teachers; school district debts; taxation for educational purposes; creation and alteration of school districts; administrative organization; and higher educational institutions. The materials are arranged in fourteen chapters, each by a different writer. The authors are for the most part active in educational administration, the teaching of professional courses in education, or the law-teaching profession.—CHARLES S. HYNEMAN.

FOREIGN AND COMPARATIVE GOVERNMENT

At present, reform of the state is for the French, as they say, *à la mode*. The patently unsatisfactory relations between politics and economics cause opinion of many shades to conclude that "reform in the state" is not enough. Thus, M. Georges Mer, in his short but well-packed essay *La Réforme de l'État en action* (Sirey, pp. 148), argues for the need of much more than "retouches." He suggests in an exceedingly striking way analogy between 1789 and the present. Assuming that economic conditions of today require as fundamental alteration of the state as political conditions of the eighteenth century demanded, M. Mer feels that the central question is whether or not the change should involve abandonment of liberalism. His long and distinguished championship of reformist syndicalism determines his strong preference for the retention of classic liberalism and individualism. This, of course, means for him and his associates a "modern state" into which economic organizations, that is to say, various *syndicats* are incorporated. M. Mer has faith that the imposition of responsibility upon these organizations, which would result from

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their becoming agencies of the state, will easily cause them to be transformed from defenders of private interests into workers for the general welfare. This faith, he insists, is based on experience. Therefore, he conceives that his sketch of necessary reforms in the realm of constitution, administration, and public finance is completely practical. Its detailed suggestions, though they emanate from "spiritual action," are a plan for "positive action."—R. K. Gooch.

The third volume of the George Washington University's "Studies in Hispanic American Affairs" deals with the ABC countries. The editor, Dr. A. Curtis Wilgus, brought together for the annual seminar in the summer of 1934 three outstanding authorities on the South American countries. Their lectures are now published in *Argentina, Brazil, and Chile since Independence* (George Washington University Press, pp. ix, 481). Professor J. Fred Rippy, of Duke University, discusses a century and a quarter of Argentine development; the course of Brazilian independent history is treated by Professor Percy Alvin Martin, of Stanford University; and Professor Isaac J. Cox, of Northwestern University, deals with independent Chile. Two introductory chapters and three appendices complete the volume. In the chapters dealing with all three of these leading South American countries, a well-rounded, solid, authoritative treatment may be found. Perhaps necessarily, the contributors emphasize political matters most; but social and economic developments are not neglected. Possibly as valuable as any parts are the discussions of Rosas, Argentina's *gaucho* dictator, the early relations between Portugal and her lusty colonial infant, Brazil, and the socio-economic ferment in contemporary Chile. Fuller documentation of the chapters by Dr. Martin would be of great assistance to the research student, although that lecturer's previous outstanding work on Brazil leaves no room to doubt his wide familiarity with the historical sources, native and foreign, of the country with which he deals, as, indeed, is also true of Drs. Rippy and Cox. The layman frequently too easily assumes a close *entente* among these three countries, and to that extent the term "ABC states" is a misleading fiction. But they probably will long be so grouped, and accordingly this volume furnishes a valuable secondary account for the student in that field.—Russell H. Fitzgibbon.

Carson the Statesman (Macmillan Co., pp. 446), by Ian Colvin, is a continuation of Edward Marjoribank's *Carson the Advocate*, and covers Lord Carson's career as leader of the Ulster Unionists from 1910 to 1914. While Carson was prepared in the last resort to accept the exclusion of Ulster from the Irish Home Rule Bill, he hoped to defeat the measure al-

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together, since he believed that a self-governing Southern Ireland would be financially impossible. His tactics were to prepare for civil war, but to avoid it if possible by parading his activities. The Irish Nationalists were equally determined to include Ulster, and the Liberal government depended upon their parliamentary support for their maintenance in office. Asquith's unenviable position is well brought out, vainly trying to evolve a compromise by which Ulster should be simultaneously inside and outside the Irish Dominion. The outbreak of the Great War found the problem as far from settlement as ever and Ulster on the verge of revolt. The author gives only a scattered and incomplete account of the preparations in Ulster. There appear to have been 110,000 trained men; but it is doubtful whether they were adequately equipped for a modern war, owing to the absence of artillery and the shortage of rifles. This was, however, of less moment, since the so-called "mutiny" in Ireland in March, 1914, made it clear that the Imperial army could not be depended upon to fight Ulster. In connection with this incident, the author makes out a good *prima facie* case to the effect that part of the Liberal cabinet intended to coerce Ulster by combined naval and military operations.—Lennox A. Mills.

For students of contemporary India, the study of the Indian National Congress is of prime importance. The Congress is not only the dominant political organization, but it has been a vital factor during the last fifty years in creating many of those social forces which have gone to the making of modern India. In his *Indian National Congress* (Oxford University Press, pp. 121), F. M. De Mello attempts to trace the development of the Congress from its early years almost to the present. He slices the subject into three general divisions: trial of the parliamentary method (1885–1904); success of constitutional agitation (1904–16); failure of mass action (1916–34). He records briefly the achievements of the Congress, as well as its failure, without any apparent bias. The work, however, is too condensed. Even then, its value would have been considerably heightened if the author, who claims to present "an historical sketch," had used more of the actual reports of the deliberations of the Congress and had done less editorializing. Nevertheless, as a short guide to a vast subject the effort is creditable.—Sudhindra Bose.

Students of Canadian history and politics will find invaluable bibliographical aid in Marion V. Higgins's *Canadian Government Publications: A Manual for Librarians* (American Library Association, pp. ix, 582). It contains a very complete check-list of publications of all departments of the federal government from the earliest times. The titles of publications

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are arranged under the departments issuing them, and are further classified to indicate their character under such headings as serials, catalogues and indexes, and special publications. A detailed index adds to the usefulness of the volume as a research tool. Brief, but well-written, sketches of the history, organization, and functions of all governmental agencies are included. Much information is given as to the character of the collections of the principal Canadian libraries. This manual is published in planographed form, which seems to be a method of publication well-suited to this type of work.—JOSEPH R. STARR.

INTERNATIONAL LAW AND RELATIONS

In a small volume entitled *International Organization* (Pitman and Sons, Ltd., pp. x, 212), R. Yorke Hedges summarily describes contemporary institutions and processes of international coöperation. The chapters are grouped under three headings: (1) the development of international organization, (2) the organization of peace, and (3) international coöperation. Several appendices, including useful documentary material, follow. As the brevity of the volume implies, the author was able to do little more than describe the constitutional structure of such agencies as the Permanent Court of International Justice and the League of Nations. Doubtless this fact, plus the extreme lucidity of the style, will place the subject within the easy comprehension of the lay reader and the student, who are the author's main targets. On the other hand, the usefulness of the book as a text in American universities would have been enhanced by the inclusion of interpretative discussions of significant problems and descriptions of the practical operation of the machinery surveyed. Although the author's objective appears to have been more to describe than to criticize or speculate, he has ventured in a few instances to present opinions and suggestions, particularly in his final chapter. Commending rather heartily the League of Nations in general, he feels that it needs to be strengthened, especially in the attainment of the ends contemplated in Articles 16 and 19 of the Covenant. He advocates further that the legislative side of international organization be given attention with a view to its improvement. The volume has an air of optimism as to the present and future of internationalism, and a confidence in the capacity of the masses to exert the right influence in foreign policy, which events of the post-war period seem hardly to justify.—NORMAN L. HILL.

For some years, the League of Nations has felt the need for a continuous international study of general questions relating to public works. The first move toward meeting the need in a comprehensive manner has been made in an inquiry conducted by the Organization for Communications

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and Transit of the League and reported upon in *National Public Works* (C. 482. M. 209. 1934. VIII) (Ser. L.o.N.P. VIII. Transit. 1934. VIII. 8.). A companion volume by the International Labor office entitled *Public Works Policy* furnishes a comparative analysis of works programs, together with a survey of recent trends in different countries, financial problems, methods of operation, conditions of employment, and the possibility of centralization and coördination of public works on an international scale. The Communications and Transit Section asked the various governments for a brief description of the main public works undertaken and completed since 1929, those under construction, and those under contemplation. The replies are reproduced in full with the exception of details of purely local interest. Although accompanying documents are not ordinarily printed, pertinent extracts are given as well as an index to all documents, whether published or not. The topics covered include roads and bridges, railways, reclamation projects, inland improvements, water supplies and sewage disposal, harbor improvements, airports, general construction such as housing, power and gas installation, and transmission and electrical communications. On the whole, the most painstaking reports are those of the British Dominions (Great Britain merely referred to reports previously submitted to various subsidiary organizations of the League), the United States, France, Italy, and the small European countries. In *National Public Works* (an addendum was, however, being prepared), there is no report from any South American country, and among Asiatic states only a notation from Turkey appears.—LESLIE B. TRIBOLET.

World Court Reports; A Collection of the Judgments, Orders, and Opinions of the Permanent Court of International Justice, Vol. II, 1927–1932 (Carnegie Endowment for International Peace, pp. xi, 870), edited by Manley O. Hudson, is the second of a series of volumes which is to contain the texts of the judgments, orders, and advisory opinions of the Permanent Court. The plan, scope, and character of the present volume are substantially the same as those of the first volume, which appeared in November, 1934, and which was reviewed in the last number of this REVIEW (p. 334), the only departure being the addition of a list of cases cited by the Court in the judgments, orders, and opinions reproduced in the present volume. Volume II brings the record of the jurisprudence of the Court down to June 7, 1932. It contains the texts of the decisions of the Court in eighteen cases, including some of the most important that have been rendered since the doors of the Court were opened in 1922. Among them may be mentioned those in the cases of the *Lotus*, the Jurisdiction of the European Danube Commission, the Rights of Minorities in Upper Silesia, the Customs Régime between Austria and Germany, and the Free Zones of

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Upper Savoy and Gex. For the convenience of the reader, the cases reported in Volume II are arranged in three lists: an alphabetical list, a serial list, and a chronological list. What was said in the review of Volume I, of the meticulous care with which the material in that volume is arranged, and of the value of the editor's notes and bibliographical references, can be said equally of the present volume. If the series is continued, as the decisions of the Court appear throughout future years, the value of this collection, especially to teachers and students, will be inestimable.—JAMES W. GARNER.

Japan's policy of expansion in the Far East, coupled with her withdrawal from the League of Nations, has caused attention to be centered on the mandated islands which were turned over to the Mikado's Empire as a part of the peace agreements after the World War. Little is known of these islands in the Pacific or of the way in which they have been administered. In his very readable book, *Japan's Pacific Mandate* (Macmillan Co., pp. 244), Paul H. Clyde has given us a thorough account of the territory under Japanese control. The author's conclusions have been based not alone upon government documents, League of Nations publications, and the annual reports made by Japan to the League of Nations; for early in 1934 he spent several months in the islands gathering material at first-hand. The various chapters of the book deal with the controversies surrounding the grant of the mandate to Japan, the government of the territory, industry and trade, education, health, and the activity of missionaries. The author concludes that in matters of government and administration there is a judicious balance between Japanese and native effort. The industry of the islands, which is based almost entirely upon the production and export of sugar, phosphate, and copra, has given rise to no labor problems. The author praises the work done where education and health are concerned, but limits his praise somewhat when discussing the activities of American missionaries in the mandate. The reader will find that a limited attempt has been made to answer some of the more acute problems presented by Japan's resignation from the League. Two questions are asked (p. 178): 1. "Where does sovereignty in a mandate reside?," and 2. "Does resignation from the League of Nations by a mandatory power involve the surrender of its mandate?" The author permits the reader to draw his own conclusions in answer to these queries. He indicates the great differences of opinion where the first is concerned and points out the widely varying views of international lawyers in regard to the second.—HARLOW J. HENEMAN.

The primary concern of Sidney L. Gulick in his *Toward Understanding Japan* (Macmillan Co., pp. 270) is to find a basis for the improvement of

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American-Japanese relations. Such improvement depends, in his judgment, on the development in the United States of a sympathetic understanding of Japan's problems, and on a revision of our policies. While the book throws no new light on Japanese policy or on American-Japanese relations, it gives the general reader a good-tempered argument in favor of a change in American immigration and naval policy, in our policy of the Open Door and defense of the integrity of China, and in the non-recognition policy as applied to Manchukuo. The author recognizes that Japan has ignored her treaty obligations, but believes that American policy should be based upon the agreements which Japan has not ignored. Having secured what she seeks in Eastern Asia, he concludes that Japan would be willing to observe new agreements embodying the spirit of the Kellogg Pact. He does perceive the need for slight readjustments in Japanese policy in the interest of "good neighborliness," which he thinks should represent the keynote of American policy in the Far East, as well as in the Western hemisphere. In substance, then, the argument runs that in the interest of peace, Japan should be given a free hand in Asia, the United States concerning itself solely with the defense of its position on this side of the Pacific.—HAROLD M. VINACKE.

In *The Treaty of Versailles and After* (Oxford University Press, pp. 192), a group of scholars and diplomats succeed in saying something new about the Paris Peace Conference and its work. Lord Riddell, British press representative at the Conference, supplies some hitherto unrecorded anecdotes about the peace-makers. Professor C. K. Webster, of the University of London, who was secretary to the Military Section of the British Delegation, reviews the general problems before the Conference. In four lucid chapters, Professor A. J. Toynbee surveys the achievements of the Conference from the perspectives of today. Contemporary evaluations of the Treaty, from the viewpoints of France, Germany, Italy, and the United States, are presented, respectively, by Professor Dennis Saurat, Baron Werner von Rheinbaben, Senator Forges Davanzati, and Mrs. M. Tappan Holland. The Frenchman appeals for British support against Germany. The German appeals for British support against France. The Italian keeps a foot in both camps in the name of "European solidarity." The American explains isolationism. At the end of this suggestive little volume, the Marquess of Reading pleads, unconvincingly, for German moderation in treaty revision and Sir Norman Angell pleads, realistically and eloquently, for collective action through the League to avert the coming chaos. "Is the world ready for such collective action? I do not know. . . . The shouting of panic, the exploitation of prejudice, may be too much for those attempting some sort of order. Very well, that will

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be the end of the story, the end of civilization. Our business is to prevent that inglorious conclusion if we can."—FREDERICK L. SCHUMAN.

Students of international relations will always welcome the publication in book form of the admirable articles which appear in *Foreign Affairs*. In *The Foreign Policy of the Powers* (Harper and Brothers, pp. 161), Hamilton Fish Armstrong, editor of that distinguished periodical, has brought together seven such articles. Jules Cambon, for France, recites history and pleads for security. Richard von Kühlmann also argues for "security" for Germany, here depicted as an innocent lamb seeking only peace with justice. The problems and dilemmas of British foreign policy are ably presented by Sir Austen Chamberlain. Dino Grandi demonstrates that Mussolini's bombardment of Corfu was "the first real contribution to European peace" and rationalizes Fascist ambition in familiar terms. A similar service is performed for Japan by Viscount Ishii: "In Manchuria, too, we have been actuated by the same motive—security." Karl Radek, more frankly and more plausibly, expounds the peace policy of the Soviet Union. The volume closes with an interesting presentation of American foreign policy by John W. Davis. These articles are not scientific analyses of foreign policy by scholars, but justifications of particular policies by diplomats. As such, they constitute valuable exhibits in the use of diplomatic verbiage and in the employment of language to conceal thought.—FREDERICK L. SCHUMAN.

Many significant data concerning the economic status of a Class A mandate are presented in Said B. Himadeh's *Monetary and Banking System of Syria* (American University of Beirut, pp. xix, 368). Because of the Mandates Commission's observation in 1926 on the working of the franc exchange standard, the proposals for reform made in this volume are particularly interesting. In order to achieve "autonomy in financial and monetary matters," a condition in the eyes of the Commission prerequisite to the exercise of Syrian independence, the author suggests, among other things, a gold coin standard, an intelligent interpretation of usury (by the Moslem authorities), establishment of a central bank, creation of industrial finance corporations by the state governments, and formation of coöperative banking associations among the peasant cultivators.—DONALD C. BLAISDELL.

Manchuria, Cradle of Conflict (Macmillan Co., pp. xviii, 343) is a revised edition of a book bearing the same title published by Owen Lattimore in 1932, a few months after the violent events which detached Manchuria from China and led to the creation of Manchukuo. Believing that

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what has happened in this area of late is only a modern phase of some very ancient problems, the author has chosen to make but few changes in the work as originally written and merely to add two chapters dealing with events and conditions since September 18, 1931. The second of these, discussing especially the relations between Manchuria, the geographical region, Manchukuo, the political structure, and contemporary history as a whole, will prove of principal interest, even though, as the author concedes, his treatment of the subject may, because of the absence of moral judgments, seem to some people "cold and bloodless."—F. A. O.

Volume IV of *Treaties and Other International Acts of the United States of America* (Washington: Government Printing Office, pp. xxvi, 855), edited by Hunter Miller, covers the period 1836–46 and contains texts of forty-two documents, among them the Webster-Ashburton treaty, the treaty of 1844 with China, and the joint resolution of 1845 for the annexation of Texas. As in previous volumes in the series, the documents appear in chronological order, and all acts which have gone into force are included, whether now in force or not. Postal conventions and treaties with Indian tribes are, however, omitted. The series is to be indexed globally, so that there is no separate index for the present volume.

POLITICAL THEORY AND MISCELLANEOUS

Marxists have accomplished amazing feats in interpreting Marx to fit their own intellectual or emotional needs. But it has been left to Mr. J. Middleton Murry to develop the startling thesis that Christianity and Marxism are not only thoroughly compatible, but absolutely essential one to the other. In a symposium, *Marxism*, by J. Middleton Murry, John Macmurray, N. A. Holdaway, and G. D. H. Cole (John Wiley and Sons, pp. 245), Mr. Murry argues that the objectification of the "conscious" individual which truly Marxist philosophy requires is exactly that objectification and "humiliation of thought" demanded by true Christianity (pp. 99 ff.). Hence, "acceptance of Marxism as far as it goes is the acid test of Christianity, . . ." and "anti-Marxism turns out, inevitably, to be anti-Christian" (p. 6). Thus Mr. Murry deodorizes Marxism and creates an esoteric revisionism which, by his own confession, is no creed for the masses. He realizes that many Marxists will not thank him for his achievement, but for such "vulgar Marxists" who can never reach his spiritual plane he has only the contempt customary among those who have captured the true vision. The other chapters in the volume are of a quite different quality. Mr. Macmurray makes an intelligent, undogmatic analysis of the bases of dialectical materialism, which he views as "rather a philosophical tendency than a system." Mr. Holdaway pre-

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sents a cogent theoretical analysis of present-day capitalism and of the current depression in terms of Marxist theory. He recognizes several possible alternatives to the socialist revolution, but disposes of them in a few brief paragraphs which might well have been expanded (pp. 174–178). Mr. Cole presents a realistic discussion of socialist tactics, particularly for England, in which he decries the communist reverence for the Bolshevik model of revolution and dictatorship, and stresses the opposition of a conservative, fascist-inclined middle class which socialists in most Western countries must face. It is unfortunate that the sections written by these three should suffer by their proximity to Mr. Murry's happy inspiration.—JOHN D. LEWIS.

In their search for explanations of behavior, reflective students of society are becoming increasingly conscious of the part played by attitudes acquired in the schools. Of real value in this connection is Merle Curti's *The Social Ideas of American Educators* (Charles Scribner's Sons, pp. xxii, 613), which is Part X of the Report of the Commission on the Social Studies of the American Historical Association. Its relevance to political science is obvious from its definition of social ideas. They are attitudes toward nationalism and internationalism, the ideas about war and peace and patriotism, about a distinctively American culture, and about the purposes of primary and secondary education, as well as about the under-privileged, i.e., Negroes, Indians, foreign immigrants, women, and laborers. The significance of the book to political scientists is lessened only slightly because the educators whose ideas are examined are selected exclusively from the fields of primary and secondary education. And the worth of the treatment is still great, although Professor Curti has made no systematic effort to evaluate the influence of the social ideas of the educators chosen. He does indicate, however, the tone of educational thought in the nineteen-twenties, when it lost its "social liberalism," and educators concerned themselves with the mechanics of education (p. 561). As prosperity vanished, the social thought of educational leaders was directed, as during the World War, toward "building a more just, democratic, and humane social order" (p. 578). These changes of direction contain potentialities of considerable magnitude, and their definition and elaboration provide political science with additional material of essential value.—DONALD C. BLAISDELL.

In *Everyman His Own Historian* (F. S. Crofts and Co., pp. 325), Carl L. Becker has collected a number of his essays on history and politics, nearly all of which have been previously published. Taking its title from the presidential address before the American Historical Association in 1931, the essays range from the egalitarian spirit of the citizens of Kansas

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to the Americanism of John Jay and the introspection of Madame Roland. Students of political science will perhaps find "Liberalism—A Way Station" and "Freedom of Speech" among the most interesting of the essays. What has happened, and is happening, to the liberal ideas put forward in the eighteenth century as solutions for social ills? It may be argued that as Professor Becker canvasses the concepts of liberty and equality in the eighteenth century revolutionary triad he offers no novel ideas for those which are disintegrating. In this he is wise, for the historian of ideas who aspires to novelty is usually a fool. Professor Becker once remarked to me that ideas are important only if they are dealt with in an important way. As an historian of ideas, Professor Becker not only deals with his materials in an important way, but also writes with a charm that cannot fail to delight his readers.—WILLIAM SEAL CARPENTER.

The Four Hundred Million (Bobbs-Merrill Company, pp. 375) is a short history of the Chinese by Mary A. Nourse, who designed it for the general reader and for young students. The author was a teacher in China for many years and has evidently gone considerably beyond the larger general histories for her materials. She writes sympathetically but objectively, and in a pleasing style. The first of the four parts into which she divides the book, which is entitled, "The Fixing of Custom," and which covers the classical ages, is the most carefully done. The other three parts deal with "Expansion and Intercourse" (from the Ch'in to the Ming), "The Shut-in Period" (the Ming and Manchu eras), and "Reform and Revolution." There is no pretense to originality or authority in Miss Nourse. But she has written a commendable introduction to Chinese civilizations which may be used with confidence as a needed complement to high school histories of Occidental peoples. Her book is attractively bound and printed and has many illustrations, notes, a bibliography, and an index.—HAROLD S. QUIGLEY.

Contrary to the opinion which has been expressed by many prominent classical philologists that Hellenistic deified kingship does not spring from Oriental roots, but can be explained from Greek ideas, Calvin W. McEwan, in *The Oriental Origin of Hellenistic Kingship* (University of Chicago Press, pp. xii, 34), attempts to emphasize its non-Hellenic, Oriental origin, as a conscious adoption of a convenient form from the East. After describing kingship in the period of preliterate history, the author clearly presents concepts of divine kingship characterized by *proskynesis* (an act of reverential obeisance) in Egypt, Mesopotamia, Minor States of the Fertile Crescent, Assyria, Chaldea, and Persia. As to divine kingship, both Alexander the Great and Hellenistic monarchies after him were influenced by Persia, which had a Babylonian basis, with a later

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Egyptian influence. The author's documentation is rich, and an appendix on the title "King of Kings" is added.—A. A. VASILIEV.

In *Fascism and Citizenship* (University of North Carolina Press, pp. 108), George Norlin presents an interesting and scholarly plea for an American nationalism that would be a "golden mean" between the extremes of Hitlerism on one hand and the individualism of present-day America on the other. He would accomplish his purpose by a continual "rediscovery" of fundamental cultural values in our American tradition, including a tendency to look to the future rather than to the past, to aspire, to avoid the "cake of custom," and to preserve the "sovereignty of the individual soul." The author discusses fascism merely as a prelude to the presentation of his major problem.—DANIEL B. CARROLL.

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DOCTORAL DISSERTATIONS IN POLITICAL SCIENCE

IN PREPARATION AT AMERICAN UNIVERSITIES[1]

COMPILED BY GRAYSON L. KIRK
University of Wisconsin

POLITICAL PHILOSOPHY AND PSYCHOLOGY

Arnold A. Allan; A.B., Iowa, 1930; A.M., *ibid.*, 1931. The Party Principles of the Hoover Administration. *Iowa.*

David M. Amacker; A.B., Princeton, 1917; A.M., Oxon, 1927. The Impairment of the Theory of External Sovereignty. *Columbia.*

Dorothy Borg; A.M., Columbia, 1931. Outbreak of the World War; A Comparison of the Facts with the Stories in the New York Papers. *Columbia.*

Maynard W. Brown; B.S., Wisconsin, 1923; M.S., *ibid.*, 1924. American Public Opinion and European Armaments, 1912–1914. *Wisconsin.*

Edward M. Burns; A.B., Pittsburgh, 1927; A.M., *ibid.*, 1929. The Political Philosophy of James Madison. *Pittsburgh.*

Thomas I. Cook; B. Sc., London School of Economics, 1928. Political Obligation in Recent American Thought. *Columbia.*

Emery Fast; A.B., Colorado, 1927; A.M., *ibid.*, 1929. Pragmatism and the Formulation of Public Policy in the United States since 1900. *Stanford.*

Clifford E. Garwick; A.B., Ohio State, 1928; A.M., *ibid.*, 1929. The Political Ideas of Thomas Jefferson. *Yale.*

Grace Givin; A.B., Kansas, 1914; S.D., *ibid.*, 1916. Louise DeKoven Bowen as a Political Leader. *Chicago.*

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[1] Similar lists have been printed in the REVIEW as follows: V, 456 (1911); VI, 464 (1912); VII, 689 (1913); VIII, 488 (1914); XIV, 155 (1920); XVI, 497 (1922); XIX, 171 (1925); XX, 660 (1926); XXI, 645 (1927); XXII, 736 (1928); XXIII, 795 (1929); XXIV, 799 (1930); XXV, 798 (1931); XXVI, 769 (1932); XXVII, 680 (1933); XXVIII, 766 (1934).

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Frances Newborg; A.B., Wellesley, 1927. Political Ideas in American Fiction. *Chicago.*

George S. Pettee; S.B., Harvard, 1926; A.M., *ibid.*, 1931. Political Revolution: Organization of Revolutionary Parties. *Harvard.*

Daniel S. Rosenberg; A.B., Washington, 1933; A.M., *ibid.*, 1934. Thomas J. Walsh of Montana. *Washington* (St. Louis).

M. Louise Rutherford; LL. B., Temple, 1921; A.B., Pennsylvania, 1926; A.M., *ibid.*, 1930. The Influence of the Bar upon Legislation. *Pennsylvania.*

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George R. Dulebohn; A.M., Gettysburg College, 1921; A.M., *ibid.*, 1923; A.M., Pennsylvania, 1930. The Foreign Policies of Grover Cleveland. *Pennsylvania.*

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Arthur W. Roehm; A.B., Baldwin-Wallace, 1929. Secretary Hoover as a Departmental Administrator. *Harvard.*

Leo C. Rosenberg; Ph.B., Chicago, 1930. Public Relations Counsel in Washington. *Chicago.*

Guy W. C. Ross; A.B., Chicago, 1901; LL.B., Harvard, 1904; A.M., Minnesota, 1935. The Administrative Law of Banking. *Minnesota.*

Leon Sachs; LL.B., Maryland, 1931. *Stare Decisis* and the United States Supreme Court. *Johns Hopkins.*

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Liba Harold Studley; B.S., College of the City of New York, 1921; LL.B., Fordham, 1925; A.M., Columbia, 1929. Progress of Aviation Legislation in the United States. *Columbia.*

John H. Thurston; A.B., Minnesota, 1931; A.M., *ibid.*, 1932; A.M., Harvard, 1933. Government Proprietary Corporations. *Harvard.*

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James K. Colman; B.S., Citadel, 1919; A.M., George Washington, 1927. State Administration in South Carolina. *Columbia.*

Robert H. Connery; A.B., Minnesota, 1929; A.M., *ibid.*, 1930. Governmental Problems in Wild Life Conservation. Columbia.

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Lavinia M. Engle; A.B., Antioch College, 1912. County Government in Maryland. *Johns Hopkins.*

James W. Errant; B.S., Illinois, 1923. Public Employee Organizations in Chicago. *Chicago.*

Russell Ewing; A.B., Minnesota, 1923; A.M., Columbia, 1924. The Problem of Personnel under City Management. *Columbia.*

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Victor James; A.B., Howard College, 1932. City-County Consolidation in Metropolitan Regions. *Chicago.*

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This is a painstaking treatment of a topic which is certainly a delicate one in the United States. Dr. Johnson has studied the laws and court decisions, and has compiled in addition a large amount of material as the result of a questionnaire sent to state school executives. Of especial interest, in view of the paucity of material on the subject, is his chapter on bible reading in the public schools. One may disagree with the author on the breadth of some of his predictions as to future decisions of state courts on the subject, but the material is carefully and impartially presented.

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